HUMAN RIGHTS AND DEVELOPMENT

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Foreword

The third Beijing Forum on Human Rights was successfully held in Beijing by China Society for Human Rights Studies on 19 October 2010, attended by about 100 high officials, scholars and experts of human rights from 28 states, international organizations and regions including China, the United States, Canada, UK, France, Italy, Australia, Peru, Belorussia, South Africa, Kenya, Mongolia, South Korea, Vietnam and the United Nations and Hong Kong, Macau and Taiwan of China, etc.

The theme of the forum "Human Rights and Development: Rethink Concepts, Models and Approaches" is supported by three sub-themes, "Scientific Development and Human Rights," "Cultural Diversity and Human Rights" and "Global Governance and Human Rights." Focusing on the forum theme, the attendees made extensive, in-depth and enthusiastic discussion and generally agreed that the forum is of great significance against the backdrop of world economy going out of the shadow of international financial crisis and entering post-crisis era. The international financial crisis stimulates people to rethink what kind of development concept can better promote world harmonious development and universal human rights, what development model can make us better meet global challenges and create better life for human beings together. The theme of the forum "Human Rights and Development: Rethink Concepts, Models and Approaches" reflects the common concern of current international community over understanding accurately the interplay of human rights and development and seeking actively to promote human rights by scientific development. The attendees observed and highly praised China's development path and mode. They recognized that human rights are not a stock-still and absolute concept, and thus a country's human rights status cannot be evaluated by merely comparing with other countries, but should be evaluated with historical view.

This book, divided into five parts according to theme, is a compilation of 69 theses received by the forum.

This book is checked and approved by Comrade Liu Xuan and Comrade Chen Zhengong, designed, edited, primarily checked and compiled by Wang Linxia, and edited by Ren Danhong.

The viewpoints expressed in the theses of this book reflect only the views of the authors, and do not represent the views of China Society for Human Rights Studies.

China Society for Human Rights Studies
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Improving Human Rights Protection Through Scientific Development

Address at the Opening Ceremony of the Third Beijing Forum on Human Rights

Luo Haocai

President of China Society for Human Rights Studies

(October 19, 2010)

Distinguished guests, experts and scholars, ladies and gentlemen,

In the golden October when people are enjoying clean and fresh air, China Society for Human Rights Studies unveiled its third Beijing Forum on Human Rights. On behalf of the Society, I would like to express my warm welcome and sincere appreciation to all the friends here.

The theme of the forum this year, "Human Rights and Development," seems to be a commonplace, but it actually has a new concept in the new circumstance. At the United Nations Millennium Summit in September 2000, leaders of various countries agreed on a serious of measurable goals and indicators with time limit in eliminating poverty, hunger, disease, illiteracy, environmental deterioration and discrimination against women, known as the Millennium Development Goals. These goals have established the concepts of "development for human rights" and "development-based human rights protection." Experience and lessons in history encourage people to increasingly deepen their recognition of the dialectical relations between human rights and development from positive and negative aspects: On one hand, the development that departs from the direction of human rights protection is very possible to go astray; the development that goes counter to the goals of human rights protection is of no future; and the development at the cost of sacrificing human rights is surely immoral; on the other hand, the human rights protection without supports from development is baseless; the human rights protection that are not integrated into development activities is meaningless; and the human rights protection that conflicts the development is nothing but a castle in the air. It is noteworthy that the UN Millennium Development Goals have requirements not only for developing countries, but also for developed ones.

In order to deepen the research on the important theme and enhance the recognition on the relations between human rights and development, we host the forum. Now, I would like to talk about my opinion in three aspects for your reference.

First, we need scientific development to consolidate the basis of human rights protection.

The right to development is a basic human right. Every person and country has the right to develop and enjoy the achievements brought by development. Currently, there are still several dozens of underdeveloped countries worldwide that do not participate in the process of global development; more than one billion people are in hunger and poverty all year round; every year, there are eleven million children that died under the age of five; and three million people died of HIV/AIDS every year. To these people, the right to development is their prior human right. Only when they first realize their right to development, eliminate hunger and poverty and solve the problems of basic medical care can they realize the development of human rights in other sectors. It is baseless to talk about realizing people's values, dignity and freedom when they are suffering from hunger and cold. But when they maintain development, they could have the basis to solve the problems of human rights protection.

However, we should notice that not all kinds of development can improve human rights; the development of the style of "Matthew Effect," which makes the rich get richer and the poor get poorer, goes counter to the goal of human rights protection. The development modes that refuse most people to participate in development process, or refuse most people to share the development fruits go against the human rights protection and are irrational. The scientific development mode that can really help human rights protection should bear the following characteristics: First, scientific development is oriented by people's needs. It is neither based on material, nor profit nor even power. Under the principle that "the development is achieved for the people and by the people; and development fruits should be shared by the people," scientific development should improve distribution system on the basis of equally treating every person so that the development fruits can benefit all people, especially the poor people, protect their right to exist, create development opportunities for them and embody equity, justice and social civilization; second, the basic characteristics of scientific development are comprehensive, coordinative and sustainable. Comprehensive development means to promote political and cultural construction in an all round way to realize sound and rapid economic development and comprehensive social progress. To realize coordinative development, we need to promote coordination between productive forces and production relations and between economic basis and superstructure. The sustainable development requires us to promote human-nature harmony, realize coordination between economic and social development and population, resources and environment, follow the civilized development path featuring production development, wealthy life and sound ecology so as to ensure sustainable development for generations; third, the fundamental way of scientific development is to make overall plans and take all possible factors into consideration. We should coordinate urban-rural development, interregional development,

economic and social development, human-nature harmonious development and the relations between domestic development and opening up to the outside world, so as to avoid the one-sided development without overall plans. We believe that the scientific development mode can help consolidate the basis of human rights protection and realize harmonious integration of human rights and development.

Second, we need law-based governance to smooth the relations between human rights and development.

Complicated connections exist between human rights and development, including unification as well as confliction. For instance, development needs a stable social environment and thus requires maintaining social orders; however, human rights protection stresses more on respecting people as the main participants, values of freedom, spiritual freedom, liberty of speech and action. This possibly leads to the contradiction between freedom and social order. Another example is, development needs collective action and joint efforts, needs profound public materials for basis and stresses on the priority of public interests; however, human rights protection stresses on "the rights one should enjoy as a person," and on the basis and inviolability of corresponding private interests. This may lead to the tense relations between the public interests and individual interests; let's look at another example. Development follows the principle of maximum profits and minimum cost, maximizes efficiency and stresses on the increase of social wealth; however, human rights protection follows the principle of equity, initiates the concept of every one is equal, seeks equal treatment and stresses on dividing social wealth on average. This may lead to the contradiction between efficiency and equity.

Undoubtedly, to improve the capacity and level of human rights protection through scientific development, we should strengthen the unification of human rights and development, weaken their confliction, and rationally solve the contradictions between order and freedom, public interests and individual interests and efficiency and equity. Though we can solve these problems through various ways, including sci-tech progress and moral education, experience in history shows that we should mainly rely on law-based governance to smooth the relations between human rights and development. The reasons are in two aspects. On the one hand, law has become and will continue to be the major adjuster of modern social relations with the responsibilities of maintaining social stability and protecting and promoting social development; on the other hand, law is the symbol of equity and justice. Thus, the process of law-based governance is also a process of affirming and protecting human rights, which always focuses on human rights protection.

It is for this reason that various countries worldwide including China simultaneously choose law-based governance to smooth the relations between human rights and development.

First, we need to establish the dialectic concept to unify the concepts of "development is achieved for human rights" and "human rights need development;" Second, a legal arrangement needs to complete two basic tasks: One is for individuals, aiming to rationally allocate rights and obligations through private laws so as to unify rights and obligations; the other is for the relationship of individual and group, aiming to rationally allocate public powers and individual rights through public laws so as to balance the powers and rights. Comparatively, since the government should shoulder the main responsibility of human rights protection, public laws will shoulder greater responsibilities than private laws; third, we should make overall plans for the legalization of human rights protection during the three phases of pre-development, during the development and post-development. Efforts should be made to authorize citizens to participate in decision making concerning development, orderly take part in development process, and what is more, fairly share development fruits; fourth, the legalization theme of the relationship between realization of human rights and development should always go through the whole process of legislation, administration, jurisdiction, and observance of law. The four links are necessary and should be closely connected. In particular, it is especially important to point out that, to fully establish the supremacy of law and ensure the courts' protection of human rights, we should respect res judicata of judicial decisions, and should not carp about the already effective verdicts made by domestic or foreign courts, and should not allow the idea of human rights to be reduced to a political tool.

Third, government implementing functions and responsibilities is needed to unify human rights and development.

The phenomenon of separating human rights and development can be easily seen in history and reality, which one-sidedly stresses on human rights protection or economic and social development by isolating them or even making them conflict against each other. It is true that individual efforts and people's participation are necessary for the organic unity of human rights and development; but during the process, the government plays a major role. Through functions such as economic adjustment, market supervision, social management and providing public services, the government, on the one hand, plans and promotes scientific development of the economy and society, and on the other hand, ensures individual to participate in development process and equally share development fruits, and constantly improve human rights conditions. Thus, thanks to the mixture by the visible hand of the government, we can realize the integration of human rights and development.

To act as a mixer of human rights and development, the government should constantly deepen political system reform according to the requirements of scientific development and human rights protection influencing and reinforcing each other. More importantly, the

government should accelerate the promotion of administrative management system reform and the construction of a service-based government, limited government, responsible government and law-based government. First, we should establish a service-based government to provide public materials in hardware and software and create the social environment that can help sound and rapid development; we need also promote equalization in basic public services, focus on the settlement of the problems related to people's livelihood, improve education and employment environment, better medical condition and protect people's right to exist; second, we should establish a limited government. On the one hand, the government should shoulder the responsibility of assisting individuals, helping them solve the problems in development that they cannot solve by themselves; on the other hand, it cannot go beyond its duty so as to maintain the integrity of people's basic personality, ensure their potentials and personalities as people, respect people as the major participants, tap out people's development potentials, protect and encourage individuals' creativity and initiative and promote comprehensive development of people; third, we should establish a responsible government. The government should not only shoulder the responsibility of maintaining public orders and protecting economic and social development, but also exercise public powers according to law to protect human rights from illegal infringement; fourth, we should establish a law-based government. Efforts should be made to promote law-based administration in an all-round way according to the six basic requirements of legal administration, rational administration, proper procedures, high efficiency and facilitating the people, being honest and keeping faith and unifying power and responsibility, so as to unify the government's responsibility of implementing public management and providing public services for citizens' right to exist, right to get relief, right to be informed, right to participate, right to criticize and right to oversee.

Ladies and gentlemen, during the 61 years after the establishment of the People's Republic of China, especially during the more than 30 years of reform and opening up, China is making efforts to improve human rights protection through promoting scientific development. On the one hand, China has maintained great achievements in economic and social development, not only creating an "economic miracle," but also making remarkable progress in constructing a harmonious society with stable society and sound orders; on the other hand, China has embarked on the road of human rights development with its own characteristics. Against the background, people's civil rights and political rights are fully protected; Chinese people extensively participate in political life through fully exercising their right to be informed, right to oversee, right to participate and right to be heard; economic, social and cultural rights maintain constant development and China has made great progress in eliminating poverty and improving people's livelihood in impoverished regions. Meanwhile, China also constantly improves human rights protection system and

mechanisms in judicial sector so as to protect people's rights to fair trials, and to establish the authority of justice. Evidences from the two aspects show that China has made remarkable achievements in promoting parallel progresses of development and human rights. But we should also be clearly aware that we still have a lot of work to do in smoothing the relations between scientific development and human rights protection and realizing their organic integration, such as incomplete political and economic systems, administrative management system and judicial system that need further reforms, as well as democratic and legal systems that need improving, unbalanced urban-rural and inter-regional development, large gap between the rich and the poor and some problems in employment, education, medical care, housing, social security, income and distribution, work safety and environmental protection. All these problems are waiting for the Chinese government to solve with research.

Distinguished guests, how to organically unify human rights protection and development is a difficulty every country must face directly. I believe this forum can provide a platform for every one here to share your experience. We will surely obtain new knowledge, reach new consensus and make new progress in making overall plans in coordinating human rights and development.

Finally, I sincerely wish every one of you a good health and a pleasant work! Thank you!

Speech at the Opening Ceremony of the Third Beijing Human Rights Forum

Wang Chen
Minister of the State Council Information Office, PRC
(October 19, 2010)

Your Excellency President Luo Haocai,

Distinguished guests, ladies, gentlemen and friends,

Good morning!

On this fine autumn day in Beijing, the Third Beijing Forum on Human Rights hosted by the China Society for Human Rights Studies has opened. An old Chinese saying goes, isn't it great when friends visit from distant places? It is a grand occasion that human rights officials, experts and scholars from various countries and international organizations gather in Beijing to discuss the great cause of human rights development in the post-financial crisis period. On behalf of the China State Council Information Office, I would like to extend sincere congratulations to the opening of the forum and a warm welcome to old and new friends attending the meeting.

The theme of this year's forum is "Human rights and development: rethinking concepts, models and approaches." This theme reflects the international community's current concern on an accurate understanding of the relationship between human rights and development and the key issue of the active exploration of promoting human rights with scientific development. At present, the world economy is stepping out of the shadow of the financial crisis into the post-crisis era. The financial crisis has prompted people to think: which development concepts can better facilitate the harmonious development of the world and universal human rights and which development models can better help us face new global challenges and create better lives for humankind? With this background, it is very significant for us, from different perspectives, to reflect and discuss the key issues of human rights and development.

The relationship between human rights and development has long been an important issue of deep concern for the international community. After WWII, the Charter of the United Nations established security, development and human rights as the objectives of the UN. In the late 1960s, the UN General Assembly adopted the Declaration on Social Progress and Development, which states that "Social progress and development shall be

founded on respect for the dignity and value of the human person and shall ensure the promotion of human rights and social justice." The Declaration on the Right to Development adopted in 1980s, emphasizes that people play the central role in development and the right to development is an unalienable item of human rights. The United Nations Millennium Development Goals adopted at the turn of the century clearly established human rights among the core content of development and drafted concrete goals. It deepened people's understanding of the relationship between human rights and development and positively promoted the mutual progress of development and human rights.

China is the largest developing country in the world and promoting the development of modernization and progress of human rights has been the unshakable pursuit of the Chinese people and government. Just as President Hu Jintao pointed out, "Since the founding of the People's Republic of China, with the universally acknowledged progress of the Chinese society and earth-shaking changes of the lives of the Chinese people, the cause of Chinese human rights has made historical progress. In particular, during the 30 years of reform and opening-up, the Party and government have regarded the respect for and the safeguarding of human rights as important principles in state governance, solemnly enshrined it into the Constitution of the Communist Party of China and the Constitution of the People's Republic of China. They also have taken concrete and effective measures to promote the development of the cause of human rights, significantly improving the level of material and spiritual lives of the broad masses of the people, substantially safeguarding their political, economic, cultural and social rights and composing a new chapter of the development of the cause of Chinese human rights." In recent years, the Chinese government brought forward the people-centered Outlook on Scientific Development, emphasizing that in development people must be put first, development must serve the people, rely on the people and the fruits of development must be shared by the people. It strives to make the society fairer and more harmonious and people's lives happier and healthier. China upholds the overall development of cities and the countryside, various areas, economy and society, people and nature, domestic development and opening-up and strives to promote overall concerted sustainable development of the society. It also has enshrined respect for and the safeguarding of human rights into its Constitution and national economic and social development plans and strives to promote full development of the cause of human rights in the country. In 2009, facing great impacts of the financial crisis, the Chinese government resolutely made an investment of 4 trillion yuan to increase domestic demand, safeguard growth, adjust economic structure and improve the people's livelihoods, ensuring a stable and fast development of the national economy; meanwhile, it made and implemented its first National Human Rights Action Plan to clearly specify working goals and concrete measures for the promotion and protection of human rights, including putting the development of human rights into overall politic-,

economy-, society- and culture-building to substantially improve the situation of human rights in China.

The past 30 years of China's reform has witnessed the exploration of promotion of the development of the society and people with new concepts, methods and approaches based on accumulated experiences. Over the 30 years, China has made historical strides from not having adequate food and clothing to being well-off with a big improvement in people's living conditions and effective safeguarding of the people's right to subsistence and development. From 1978 to 2009, China's GDP saw an average annual increase of 9.9 percent. Its per capita GDP grew 12 times and its economy leaped to rank third in the world. People's living quality has been significantly improved and the Engel Coefficient for urban residents dropped from 57 percent to 36.5 percent, and the Engel Coefficient for rural residents dropped from 67 percent to 41 percent.

The Chinese government attaches importance to institutionally safeguarding and improving the people's livelihood. China applies the New Rural Cooperative Medical Care System to its 800 million peasants; it has also started the pilot New Rural Pension Insurance System. It has greatly alleviated the problems of unemployment, education for children and poor living conditions for low-income groups. China enforces the nine-year compulsory education in both its urban and rural areas and now the system covers 99.7 percent of its population. Since 1978, China has seen a decrease of more than 230 million people in abject poverty, which account for 75 percent of the total population lifted out of poverty in developing countries in the period. The life expectancy has increased by five years from the beginning of reform to 73.

Since reform, China has stuck to the path of political development with Chinese characteristics, adhering to the rule of law and building a country with a rule of law and effectively safeguarded citizens' political rights and freedom on the track of democracy and law. At present, China has 233 laws in effect, more than 690 administrative regulations and more than 8,800 local regulations, which basically form a legal system with the Constitution at its core and a legal institution to safeguard human rights. In 2009, China's National People's Congress amended the Election Law to clearly stipulate that deputies to the Congress should be elected according to the same population ratio in urban and rural areas, enhancing the extensiveness of the deputies, improving the election system and better incarnating equality among people, areas and ethnic groups. The Chinese government actively promoted the transparence of its administrative affairs, promulgated and implemented the Decree of Government Information Openness of the People's Republic of China and improved its spokespersons system and exposed government information according to the law, safeguarding the people's right to be informed, to participate, to be heard, and to oversee. In 2009, the State Council Information Office, other ministries and

provinces, ethnic autonomous regions and municipalities held 1,646 press conferences. The rapid development of the Internet has allowed Chinese citizens to expand their ways to freely express opinions. At present, China has more than 420 million Internet users with an Internet penetration of 31.8 percent, which is above the global average. China has more than 2.79 million websites and nearly 1 million forums and 231 million bloggers. The Internet has become an important source for the Chinese government to learn the condition of the people, to gather their wisdoms and to improve its work. By the end of 2009, China had published 43.7 billion copies of newspapers, 3.1 billion copies of periodicals/magazines, and 7 billion volumes of books. More than 3,000 novels were published in 2009. The country had 251 radio stations, 272 TV stations, 2,087 radio and TV stations. There were 173.98 million cable TV users, and 62 million users of cable digital TV services. The overall population coverage rates of radio and TV broadcasting were 96.3 percent and 97.2 percent, respectively. In 2009 China made 456 feature films and 102 other films including popular science films, documentaries and animated cartoons. The rapid development of the press and publication industry has provided strong support and guarantee for the fulfillment of the increasingly growing needs in spiritual and cultural lives of the people.

Actively responding to the initiatives of the UN, China has always strived to reach the Millennium Development Goals. It has achieved the goal to reduce by half the proportion of people without access to safe drinking water by 2015 six years in advance. Since 1949, China has always, adhering to international and humanitarian spirits, done its best to provide various sincere and unselfish assistances to developing countries, greatly promoting the economic development and improving people's livehood of developing countries. So far, China has written off debts worth 26.5 billion RMB yuan from 50 of the least-developed countries and poor countries with heavy debts, and it has provided US$10 billion in favorable loans to African countries and offered credit support worth US$15 billion to ASEAN countries, including Vietnam, to help them cope with the financial crisis. China has built more than 150 schools, nearly 100 hospitals, more than 70 water treatment centers and more than 60 stadiums for developing countries and sent medical teams to more than 70 countries, curing hundreds of millions of patients.

The progress and development of the cause of human rights in China are obvious to all. Of course, to be frank, we admit that as a result of lack of development or unbalance in development, there are still unsatisfying elements in the condition of human rights in China and we are taking vigorous measures to persistently promote the cause of Chinese human rights to achieve more. And the resolution of China is also obvious to all. We have to point out that, the view that only recognizes the prosperity and development of the Chinese economy and neglects the vivid reality of the development and progress of human rights in China is apparently incomplete and unjust. We should also point out that, despite the fact that

we are now in an era of globalization and cultural diversity, there are always some people in the world who use their accustomed perspective and value judgment to view the human rights and development of different countries, different ethnic groups and different cultural backgrounds. They always want to willfully impose their "black or white" value on others or appeal to force or by other means to support those people who represent their values and concepts and even ignore the law and true public feelings in other countries. However, the behavioral concept of "Don't do to others what you wouldn't like them to do to you" advocated by Confucius more than 2,000 years ago has been accepted by more and more people in various countries. I believe that, those acts with prejudices and certain motives won't benefit the development and progress of the cause of human rights in China and the world and run counter to the current trend of promoting world peace and development and building a harmonious world.

As a developing country with 1.3 billion people and a per capita GDP ranking around 100th in the world, China has tens of millions of people still living in poverty, a rural population of more than 700 million and more than 800 million people at employment age. This has posed rare difficulty for China to develop and promote human rights. Therefore, for China to build a rich, democratic, civilized and harmonious modern country and achieve the sublime goal of fully enjoying human rights, it remains an arduous long-term task. In his letter addressed to the China Society for Human Rights Studies on December 10, 2008, President Hu Jintao emphasized, "In the process of fully building a well-off society and accelerating socialist modernization, we must, as always, uphold the universal principles of human rights and at the same time, according to the basic condition of the country, substantively put safeguarding the people's right to subsistence and development first in the safeguarding of human rights; we must, on the basis of promoting the fast and sound development of the economy and society and according to the law, guarantee the rights for all members of the society to equally participate and develop. The Chinese people will, as always, enhance international cooperation in human rights and with the people of other countries, make their due contributions for the promotion of the healthy development of the cause of world human rights and the building of a harmonious world of lasting peace and common prosperity."

We will follow the instructions given by President Hu, and, like we did in the past, strive to promote scientific development and social harmony, implement the principles of respecting and safeguarding human rights, strengthen international cooperation in human rights, learn and draw on all the beneficial experiences of various countries to make new and greater efforts in promoting the consistent progress of the causes of China's building of modernization and human rights.

Ladies, gentlemen, friends:

Autumn is the season of harvest. Despite that we are from different countries with different cultural backgrounds, languages and viewpoints, we share a common wish: to contribute to the development and progress for the cause of world human rights. I sincerely wish we can use the Third Beijing Human Rights Forum to express views and opinions and put forward proposals with wisdom to usher in a better future for world human rights and development.

Finally, I wish the Third Beijing Forum on Human Rights success!

Where Westerners Stray in Their Exploration of China's Human Rights

Dong Yunhu
Vice-President & Secretary-General of China Society for Human Rights Studies

Respecting and protecting human rights is an important fruit of the progress of human society and a significant landmark for a modern civil society. It is a common pursuit for people throughout the world and a long, sublime goal for the Chinese government and its people. Since the reform and opening up initiated in 1978, China has made unprecedented progress in both its human rights cause and modernization drive.

1. The ideas and legal policies of human rights go mainstream. The Communist Party of China (CPC) and the Chinese government have achieved a major shift in understanding human rights: from criticizing human rights, to being afraid to talk about human rights, and finally to respecting and protecting human rights as a principle of ruling and administering the country. Especially in recent years, China has put forward the people-first scientific outlook of development and a major strategy of constructing a harmonious socialist society. The principle of respecting and protecting human rights has been shrined down in China's Constitution, its 11th Five-Year Plan (2006-2010) and the CPC Constitution. In 2007, Chinese President Hu Jintao mentioned in his report at the Seventeenth Party Congress, "We must respect and safeguard human rights, and ensure the equal right to participation and development for all members of society in accordance with the law," ensure that all our people enjoy their rights to education, employment, medical and old-age care, and housing, guarantee the people's rights to be informed, to participate, to be heard, and to oversee. In 2008, Hu Jintao addressed the China Society for Human Rights Studies at the 60th anniversary of the adoption of *Universal Declaration of Human Rights*, calling on us to further deepen international cooperation in human rights, work together with the rest of the world to promote a healthy development of the world's human rights cause, make due contribution to a harmonious world of lasting peace and common prosperity. In 2009, the Chinese government issued its first *National Human Rights Action Plan of China (2009-2010)*, making a detailed plan for its human rights cause in the next two years. This move made China the first among the largest countries to draw up a plan for human rights cause. It is safe to say that respecting and protecting human rights has become an important theme for

China's national construction, social development and foreign cooperation.

2. China has found a path suited to its conditions in terms of its human rights cause. That is: to proceed from China's conditions, adhere to the principle of putting people first, give priority to people's rights to subsistence and development, and to promote a comprehensive coordinated development of civil and political rights in relation to economic, social and cultural rights, and of individual and collective rights, in the backdrop of positive interaction of reform, development and stability.

3. China has established a series of basic systems in promoting and protecting human rights. China persists in going a political path with Chinese characteristics, adheres to ruling the country by law, and continues to improve the democratic and legal systems with regard to promoting and protecting human rights. Now, China has 233 laws, more than 690 administrative regulations and more than 8,800 local regulations. A comparatively complete legal system with the Constitution at the core that guarantees human rights is now in place. Democratic progress has been constantly made in social, political life. Institutionalized, standardized, procedural improvement has been made in democratic politics. The scope of citizens' orderly political participation has been widened, providing an effective protection for citizens' civil, political rights and freedom.

4. Historic changes have been achieved in people's subsistence and development. The transformation of human destiny and the improvement of dignity are China's most profound change. Since the reform and opening up in 1978, China has realized two historic leaps in terms of its people's overall lives: from poverty to adequate food and clothing, and then toward a well-to-do status. China, with nine percent of the world's land, has managed to feed its people, 22 percent of the world population. It has lifted over 200 million people out of poverty. Its per capita gross revenue has reached a level of middle income countries. The life expectancy of Chinese people has reached 73 years. The Chinese overall educational level has ranked among the best of the developing countries. Chinese people have basically led a life with dignity, and obtained a wide space for free development.

After all, China is a large developing country with a population of 1.3 billion. Its human rights cause is still under construction, like its modernization. Due to its weak economic foundation, a low development level, imbalanced growth in different areas and some underdeveloped aspects in the society, China still has had many problems to deal with in the areas of citizens' social participation, employment, social security, education, health, income distribution, and guarantees related to ruling the country by law. We may see from the above mentioned four aspects that since the reform and opening up in 1978 the progress in China's human rights has been tremendous and profound. The current status of China's human rights has been so far at its best period. If we say the country has created a human miracle because of its modernization achievements over the past 30-odd years since 1978, it is safe to say a

great leap forward in its human rights cause is one of its splendid achievements. In 2008, a US Pew Research Center's survey found that 86 percent and 82 percent of the Chinese people were positive about the course of their nation and its economy, ranking No. 1 among the 24 countries surveyed; that 81 percent, 64 percent, and 58 percent of Chinese citizens rate many aspects of their own lives favorably, including their family life, their incomes and their jobs. This, from another angle, reflects attitudes of the Chinese people over their country's status quo of human rights.

Pitifully, the Western countries hold a different view of China's human rights despite the country's actual conditions and its people's attitudes. On the one hand, they are very positive about China's economic development, regarding its rise, miracles, and even its growth mode. On the other hand, they ignore the progress of its human rights cause, always showing discontent. Some even think that China's human rights did not move forward but backward. I think this is self-contradictory. China's miracles are created by its people. If they were oppressed, and had no initiatives and creativity, how come the country has created economic miracles? If the Chinese people could not gain benefits from the national growth, with their human rights unprotected, how come most of Chinese citizens are satisfactory about the course of their nation and their lives?

Why there is a great discrepancy between the West's knowledge of China's human rights and its actual conditions attributes mainly to the occidental-centrism. The Westerners are used to politicizing and ideologizing China's human rights. They are used to regarding the Western social systems and growth modes as the embodiment of human rights, while treating other social systems and development modes as violations of human rights. Therefore, they take it for granted that the CPC-led China is an incarnation of opposing human rights. This way of thinking made them entrenched in what Francis Bacon called "the Idols of the Cave." Restrained by their own "caves," they cannot get a truthful picture of China's human rights, or see its positive changes and developments.

We should acknowledge that there exist obvious differences between West and East concepts of human rights and their ways to realize human rights. The West think human rights are only individual rights, while China thinks human rights are not just individual rights, but contain collective rights, such as the right of national independence, and the rights to subsistence and development. Thus, the West stress that human rights are civil and political rights, while China further emphasizes economic, social, cultural rights are the foundation of civil and political rights, and the two types of rights are equally important and inseparable. The West think so long as the Western capitalist growth mode of free market, the tripartite separation of powers based on private ownership, and a parliamentary democracy based on many vying parties are realized, can the standard of human rights be fulfilled. However, China think that the ideal, goals, values and principles of human rights are universal, but the

path and mode to realize them should vary according to different national conditions. Each country should proceed from actual situations to explore a path suited to its conditions. Only in this way can the human rights cause obtain a sustainable growth. China's view of human rights not only conforms to international principles of human rights, but corresponds to the country's actual conditions and the wishes of its people. Practice proves that this is effective and deserves the respect and understanding from the West.

We should note that China's different view and mode of human rights from the West was determined by the country's history, culture and national conditions. First, China and the West are different in cultural backgrounds. Compared with the West that stresses natural attributes of humans as well as individual rights, the Chinese Confucianism places emphasis on social attributes of humans, morality, individual dependence on others, and interrelationship between individual and collective rights, and between rights and obligations. The Chinese advocate a collective humanitarian ideal – "[he] wishing to be established himself, seeks also to establish others; wishing to be enlarged himself, he seeks also to enlarge others," "Do unto others as you would have them do unto you," "Men did not love their parents only, nor treat as children only their own sons. A competent provision was secured for the aged till their death, employment for the able-bodied, and the means of growing up for the young. They showed kindness and compassion to widows, orphans, childless men, and those who were disabled by disease, so that they were all sufficiently maintained." Over the past two thousand years, such an ideal has been an important spiritual wealth for the Chinese nation and is still one of the spiritual sources for contemporary China's view of human rights.

Second, China and the Western countries differ greatly in the issue of human rights during modern revolution. The West in their bourgeois revolutions opposed feudalism that suppresses individuals. Thus, while proposing the idea of human rights, they emphasize individual and political rights, with a purpose of fighting against divine rights of kings, religious authority and hierarchy under the feudal autocracy. While modern China was under the dual oppression of imperialism and feudalism, with the former bringing to the Chinese nation a disaster on human rights. For the Chinese people, there would be no collective human rights without the independence and liberation of the Chinese nation. Let alone the human rights at the individual level. This decides a path of human rights unique to China whose revolution had to fight against both imperialism and feudalism, and to strive for human rights at both individual and collective levels.

Third, China and the Western countries differ in modernization paths in terms of the backgrounds and development stages. The Western developed countries are pioneers and front runners, leading the world's modernization and human rights cause, controlling the "game rules" of the international political and economic systems, dominating the discourse

power in terms of the mode of economic development and human rights. China is a late-rising country grown out of a poor semi-colonist and semi-feudal society. In terms of modernization and human rights, it is a late starter, and has long been at a disadvantageous position. China is facing adverse international environment and external pressure, and confronting an arduous task of modernization that took dozens of years to fulfill what developed countries spent several hundred years. Besides, China is the most populous country, with weak economic foundation, a limited per capita resource and a relatively worse natural environment. All these determine that the rights to subsistence and development have become the priority of Chinese people in terms of human rights; that in China, civil and political rights should develop and go along with the rights to subsistence and development; that the Chinese government will shoulder greater responsibilities and exert a larger role in promoting modernization and human rights than some Western countries.

In a word, China's view and development mode of human rights are an integral part of its growth mode of modernization. They are deeply rooted in the country's history, culture and national conditions, and in the fundamental requirements and wishes of the Chinese people.

Currently, each country has a deep reflection on the international financial crisis, working towards a full economic recovery, healthier development and better enjoying human rights. The crisis in some way has reflected inherent problems in western countries that apply a capital-oriented development mode and an egoism-oriented outlook of human rights. It demonstrates once again that the western modes reflect neither a modernized development mode nor a universally true mode of human rights. Western countries should abandon the way of thinking based on occidental-centrism, get rid of the "Idols of the Cave" in terms of politicizing human rights, give a better understanding and respect towards China, the largest and fast developing country, offer more understanding, respect and support to China that has made efforts and gained experience while exploring a path and mode for its human rights cause suited to its conditions, and listen more to China's voice in human rights.

An open China needs to absorb all human excellent cultural fruits and useful experiences, and desires the greatest understanding and support from other countries. We advocate dialogues and exchanges among a variety of views and modes of human rights on the footing of equality and mutual respect. We should learn from each other, complement each other and make progress together. We welcome well-intentioned opinions and suggestions from those concerned about China's human rights. We also hope that friends from other countries come to China and see for themselves the conditions of its human rights.

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SCIENTIFIC DEVELOPMENT AND HUMAN RIGHTS

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Dialectics of Science & Technology and Human Rights

Ai Silin & Wang Guixian
China

The human rights system and its sub-categories are truly rich in contents. However, arrangement of these contents in a lexical order will not only trigger conflicts among different types of human rights theories, but also directly influence people's understanding of the relationship between human rights and other social factors. In the research areas on philosophies of ethics and law, the influence of science & technology on moral standards and legal conventions has drawn widespread attention. If Habermas' idea "human rights has two sides, as moral and ethical scope and a legal scope coexist"[1] is accepted, then, the relationship between human rights, an essential content in philosophies of ethics and laws, and science & technology, shall deserve our utmost attention.

Undoubtedly, the blind infatuation and admiration for science & technology are a perfect reflection of an optimistic stance, which simplifies the complicated and dialectical relationship between the two. To fully comprehend this dialectical relation, we should, first of all, analyze the dialectical relation between human rights and science & technology.

The Relationship between Science & Technology and Human Rights: One-dimensional or Multi-dimensional?

It was pointed out by Marx in *The Communist Manifesto* that "the bourgeoisie, during its rule of scarce one hundred years, has created more massive and more colossal productive forces than have all preceding generations together." Production relations play an indispensable role. But it was clearly pointed out by Marx that this dramatic boost in productivity is closely associated with science & technology. The evidences that corroborate how science & technologies have hugely boosted productivity: "Subjection of Nature's forces to man, machinery, application of chemistry to industry and agriculture, steam-navigation, electronic telegraphs, clearing of whole continents for cultivation, canalization of rivers, whole population conjured out of the ground." [2] These are the telling evidences of social

1. Habermas: *Post-nationality Structure*, Shanghai, Shanghai People's Press, 2002, P. 138.
2. Volume 1 of *Selected Works of Marx and Engels*, Beijing, People's Press, 1995, P. 277.

development and progress.

Besides, over the period of more than a century in the past, the rapid development of science & technology has made possible the high level of automation in the departments of social production, and "automation seems to be, in truth, the huge catalyst for developed industrialized society." It does not only dramatically boost people's quality of life, but also changes people's working conditions, "fueling the transition of 'blue-collars' in the direction towards 'white-collars' in the most important industrial organizations; the number of non-production workers soars."[1] To a certain extent, it undermines the characteristics of "dissimilation" of the workforce. From the perspective of moral psychology, meeting these material conditions provides guarantee for individuals to pursue higher level of needs. From the society as a whole, it is precisely the development of science & technology that provides necessary conditions for the revival of "welfare states." The so-called welfare states provide assistance to material welfare (such as basic needs of shelter, food and healthcare) and spiritual enjoyment (such as education and cultural facilities) to its citizens through national means. Material welfare and spiritual enjoyment are either directly or indirectly associated with science & technology. On a certain level, the development of science & technology has made it possible for welfare states to be established. If the universality of welfare states has guaranteed the entitlement of the majority of people to share human rights, the guarantee would not have been possible without the tremendous amount of material wealth created as a result of high-speed development of science & technology.

However, the preposterousness is that while science & technology have made contributions to the burgeoning of material wealth, the level of human rights fails to be boosted entirely. The phenomenon of "dissimilation"[2] of capitalistic society described by Marx in the 19th century was, in actual fact, one that laborers suffered both spiritual and physical tortures and both their rights to life and freedom have been seriously jeopardized and harmed. However, until nowadays, in many western developed capitalist countries, the development of science & technology has only lessened the physical suffering people are subjected to; rights to life and equality and other basic rights pretty much remain unimproved. It was even believed by some western Marxists that some "advanced" corporate management systems, such as the Taylor System and Ford System, which further worsen the phenomenon of dissimilation – are a more blatant violation of human rights.

1. Herbert Marcuse: *Single-dimensional People*, Shanghai, Shanghai Translation Publishing House, 1989, Pages 35, 27.

2. Marx did not only fail to elaborate exclusively on the issue of "human rights," but also the concept of human rights was used in a negative manner, even if it was covered sometimes. In other words, he held a strict critical attitude towards the abstract discussion of human rights. Through our comparisons of researches, it is not difficult to discover that the "dissimilation" theory proposed by Marx is, to a certain extent, can be interpreted as a description of general denial of human rights in capitalistic society.

Besides, scientific & technological development has raised new challenges to human rights. The soaring crime rate, as a result of loss of rational values, is an ordinary threat to human rights of the general population; high-tech (such as cyber-crimes), while facilitating people's daily life, has posed unparalleled threat to people's right to life and properties; the environmental and nuclear threats due to industrial development have even threatened our right to survival. From these perspectives, science & technology, instead of providing guarantee and promoting human rights, has seriously harmed human rights and impeded freedom and comprehensive development. Hence, the relationship between science & technology and human rights is by no means a positive correlation; the duality of science & technology has made the relation all the more complicated.

The Dynamic Relationship between Multiplicity of the Concept of Human Rights and Science & Technology

The dialectical relationship between science & technology and human rights reveals that there are multiple possibilities associated with the influence of science & technology on human rights. However, the concept of human rights itself is multiple and this multiplicity has triggered intense controversies and disputes among disparate theories on human rights. It requires our further observations and evidences to see whether this multiplicity is related to science & technology and if so, how much our understanding of human rights is affected by science & technology.

The multiplicity of human rights refers to the multiple layers of human rights, and also the conflicts of various human rights. Some scholars believe that human rights have three layers: the first layer is the notion of human rights raised in the Age of Enlightenment. It mainly includes people's right to life, properties and freedom, among which right to freedom serves as the core underpin. But right to freedom is only limited to the passive meaning. The second layer is social right, which includes rights to work, unemployment benefits, education and entitlement to national welfare. At this point, human rights have already transferred from passive to active; the third layer includes such rights as peace, development and environmental protection.[1] These three layers tell the diversity of human rights, and also show that human rights are constantly in the process of dynamic development, in direct association with science & technology.

As described above, the rudimentary concept of human rights is narrow and constrained, a reflection of the then social and economic conditions. With the development of science & technology, as well as productivity, human rights can by no means be restricted within the scope of right to freedom, and should include right to equality, which is based on right to life,

1. Zhang Huaxia: *Science and Human Rights*, Open Era, Issue 6, 1998, P. 19.

properties and freedom.

John Bordley Rawls raised two principles of justice, which, on some level, can be viewed as an argumentation for the second layer of human rights. However, unlike the second layer of human rights in which details are elaborated, Rawls argued the paths of accomplishing it from a perspective of moral philosophy. The third layer of human rights is a direct reflection of the current development of science & technology as well as human.

It can thus be concluded that the increasingly enriched layers of the concept of human rights can be seen as the result of scientific and technological development. What is worth noting is that this hierarchy of human rights comes from both the promotion of science & technology and people's reactions towards threat to basic human rights brought by science & technology. In contemporary society in particular, the challenge of human rights posed by scientific & technological development has directly caused new contents of human rights to emerge.

The multiplicity of human rights can be also reflected in the fact that it not only addresses the conflicts within human rights in contemporary society, but also takes the issue of justice between generations into consideration, i.e. the problem of relationship between human rights of current generations and that of the future generations. The development of science & technology has dramatically boosted productivity and unfortunately people's excessive exploitation of resources. To gain benefits through using up the resources available is definitely effective in raising the living standards of contemporary people. However, it is beyond the shadow of a doubt that this development model, to a large extent, deprives future generations of their basic and necessary survival conditions, tremendously undermining their human rights.

That is precisely why contemporary people must take the issues of survival and development of future generations into consideration, while developing human rights, so as to accomplish sustainable development of a race, a nation and even the Earth. This human rights issue associated with justice between generations is exactly caused by scientific and technological development.

Every coin has two sides. While promoting and guaranteeing human rights, the development of science & technology has also raised a challenge to human rights. The increasingly enriched contents of the concept of human rights caused by the development of science & technology indicate a complicated dynamic relation between the two. The dialectics of science & technology not only implies that people are required to take a cautious and circumspect attitude towards the relationship between science & technology and human rights, but also to gain a deeper understanding of the multiplicity and complexity of the concept of human rights.

Uniformity of Human Rights and Ecological Civilization

Science & technology has caused multiplicity of human rights, but can the multiplicity of human rights form internal consistency theoretically and practically? If yes, why are there so many disputes over the theory of human rights in theory and why do conflicts exist between different layers of human rights and different terms of human rights of the same layer? How should we treat these conflicts? Is it possible to deal with the conflicts? And how is that, exactly?

We believe that the multiple understandings of human rights are determined by multiple factors. From an ideological perspective, the differences exist between the liberalistic view of human rights and community view of human rights; the same is true between the socialistic view of human rights and capitalistic view of human rights; from cultural perspectives, the views of human rights from cultures and traditions of Christianity differ vastly from that of Confucianism.

However, from our perspective, people's multiple understandings of the concept of human rights are internally consistent. The reason for inconsistencies is differences in the theoretical starting point for the views of human rights. For instance, western developed nations stick to the view of liberalistic human rights wherein right to freedom may be the core underpinning of all the rights. However, in developing countries, the foundation of theory of human rights should begin with right to life and right to development. In solution of the differences between human rights, the key lies in determining the most fundamental starting point of the theories of human rights.

The different theoretical underpinnings to the view of human rights in western liberalism and developing countries have caused disparate understandings of human rights. However, from my point of view, these two underpinnings are, in nature, internally consistent. In other words, right to freedom and right to survival are not contradictory; instead, the former is, to a large extent, a reflection of the latter. It was pointed out by Marcuse that "freedom from want is the nature of all freedoms."[1] Even from the perspective of western liberalism, right to freedom includes a sort of "freedom from want,"[2] which is, in actual fact, aimed to provide guarantee for people's basic survival and development. In other words, right to survival itself offers people the freedom from material wants. Hence, if we view right to freedom as the basic right like liberalism, then, the right to freedom from want is the key element of right to freedom.

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1. Herbert Marcuse: *Single-dimensional People*, Shanghai, Shanghai Translation Publishing House, 1989, P. 3.
2. Bunnin, N & Jiyuan, Y. 2004. *The Blackwell Dictionary of Western Philosophy*, Blackwell Publishing, P. 610.
Roosevelt raised four types of right to freedom in "Fireside Chat," i.e. freedom of expression, freedom of belief, freedom from want and freedom from fear. This type of freedom from fear, to a large extent, can be considered as the guarantee of human right to survival.

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By now, we can basically conclude that the entire human rights system is established upon the right to survival and right to freedom and other human rights are the expansion based on the right to survival. On this level, we can conclude that science & technology have boosted the development of human rights, and more effectively guarantee human rights.

Some may cast doubts on this argument by suggesting that the uniformity of human rights may solve the relation between right to freedom and right to survival and can even tackle the issue of priority of different layers of human rights, but some other preposterous relations between science & technology and human rights mentioned above fail to be effectively dealt with, such as the relation between environmental right and science & technology. People want to guarantee right to development, they are bound to rely on science & technology to invest tremendous efforts in developing economy, but environmental pollution caused by science & technology has jeopardized their environmental right. Thus, it can be seen that science & technology are still the chief culprit for the conflict between right to development and environmental right. From my perspective, this notion, in essence, fails to address the internal relations between environmental right and right to survival. If we examine the conflict between environmental right and right to development caused by science & technology from the perspective of right to survival – the theoretical underpinning of human rights, the tension between the two does not seem quite difficult to be eased. If science & technology undermines our environment while promoting the development of human beings, it eventually harms our right to survival, because the increase of malicious diseases caused by environmental deterioration is a direct threat to our right to survival. On this level, science & technology pose more harm to, rather than help to protect, our human rights.

The conflict between right to development and environmental right, in actual fact, can be solved and prevented. The nature of environmental right lies in the issue of sustainable development of people and human society and it is actually about how to accomplish harmonious development between people and nature. It was raised in the Report to 17th National Congress of the CPC that the concept of ecological civilization provides the solution to the conflict between the right to development and environmental right. The so-called ecological civilization requires conservation of energy resources, protection of ecological environment, improvement of industrial structure of economic industry, and change in mode of growth and consumption. However, from the perspective of human rights, ecological civilization, by nature, solves the conflict between economic growth and environmental protection. Economic growth should be based on environmental protection and environmental protection should be implemented during the process of economic growth. Moreover, benign economic growth will not damage our environment; instead, it will benefit environmental protection. In the morphemes of ecological civilization, “ecology”

emphasizes the environmental right in human rights and "civilization" stresses the right to survival and development in human rights; what links the two together is science & technology. Ecological civilization emphasizes both the top priority of right to survival and the importance of environmental right, and more importantly, the key role played by science & technology.

The primary reason why ecological civilization is able to play the roles of effectively and reasonably utilizing science & technology, maximizing their benefits and minimizing their shortcomings is that it can effectively bridge the tremendous gap between rationality of tools and rationality of values; it even takes a step further to organically integrate the two. The reason why science & technology have become the force presiding over humans is that there is a clear division between people's rationality of tools and rationality of values. If we stick to the people-oriented principles, treating people as aim instead of means and moving on to eliminate the tension between rationality of tools and values, then science & technology will help to boost self-fulfillment and guarantee basic human rights. Otherwise, science & technology will degrade into the force that dominates mankind.

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The Spiritual Substance of Scientific Development is to Promote and Realize Human Rights

Hu Jianmiao & Liu Dongliang
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I. Scientific Outlook on Development: Shifting the Focus of Development Back to "Human Beings"

Development is the eternal focus for human society and the theme universally concerned by the contemporary world. Social development of any kind should be dominated by some certain outlooks on development. An outlook on development is the general view and fundamental opinion of the substance, goal, connotation and requirement of development, as well as the reflection and indication of the demands of economic and social development on the ideological layer. Just like the fact that the revolutionary practices need guidance from the revolutionary theories, the outlooks on development also play the role of guidance, leading for social development. Only with the correct development ideologies and development strategies can the society develop rapidly and healthily. In this sense, what kind of outlook on development should be established is of great importance to any societies.

Viewing from the development course of human society, we can basically divide the ideologies on development into two major types and phases: traditional outlooks on development and contemporary outlook on development.

Before the 20th century, though many people constantly publish their sporadic opinions and views on development, their views are far from being systematic and comprehensive. It is commonly believed that the systematic and theoretical outlooks on development could date back to 1940s. After the World War II, development became the common tasks for nearly all the countries, especially the vast majority of developing countries. The systematic and theoretical views and opinions on development also emerged, giving birth to clear outlook on development, namely, the traditional development outlook in early stage. According to traditional development outlook, development means industrialization, economic growth and the increase of gross national product (GNP). It makes GNP and its per-capita amount the important, and even the sole standard to evaluate the economic and social development of a country or a region. We should admit that the traditional development outlook has indeed greatly pushed forward the material wealth accumulation of human society and has brought a large number of western countries into the row of developed countries. However, many

social and political difficulties such as the increasingly larger rich-poor gap, deterioration of economic structure, exhaustion of natural resources and serious damages to the ecological environment also emerged together with economic growth. All these difficulties reflect the serious limitation of the traditional development mode. In 1972, the renowned futurist organization, Club of Rome issued its research report the *Limits of Growth*, ringing the alert bell for the traditional development outlook of the human society. The report points out that owing to the limitation of the earth, there are limits to growth, and if we do not change our traditional development outlook, namely the concept of "human conquering the nature" initiated by the economic growth mode after the industrial revolution, the consequence may put human beings and the nature into sharp contradictions and human beings may be constantly retaliated against by the nature. Actually, the traditional industrialization mode has led to population explosion, resource shortage, environment pollution and damages to ecology, putting human society in a greatly difficult position.

During the process of reconsidering and criticizing traditional development outlook, people gradually realize that "development" should be distinguished from "growth;" definitely, development does not simply mean increase of material wealth. Development means the comprehensive and substantial changes of a country in the process of social development. Economic development should be companied by adjustment of economic structures and reform of the whole society; development is the systematic economic growth process accompanied with reforms of economic structures, political systems and legal structures[1]. From 1970s to 1990s, while rethinking the questions such as what on earth "development" is, what the purpose of development is, and what approaches should be sought to obtain development, people invented many new outlooks on development such as equal development outlook, development outlook of circular economy, comprehensive development outlook and free development outlook[2]. In 1987, the United Nations Conference on Environment and Development issued a long report entitled *Our Common Future*, putting forward "outlook on sustainable development;" in 1995, the International Conference on Population and Development in Copenhagen proposed to put human beings in the center and noted that the ultimate goal of development is for the whole people, ushering in the development outlook of "putting people in the center."

Entering the 21st century, the Communist Party of China and the Chinese government put forward the Scientific Outlook on Development in combining with the theories and practices on development both at home and abroad, especially the reality of China. The

1. Han Xiping: *Understanding the Scientific Outlook on Development from Four Dimensions*, *Law and Social Development*, Issue 6, 2007, P11.

2. Zhan Hongwei: *From Traditional Development Outlook, New Outlook on Development to Scientific Outlook on Development*, *Journal of Yunnan University of Nationalities (Social Sciences) Issue 5*, 2008, P65-67.

Scientific Outlook on Development takes development as its essence, putting people first as its core, comprehensive, balanced and sustainable development as its basic requirement, and overall consideration as its fundamental approach[1]. The most distinguished characteristic of the Scientific Outlook on Development is the concept of "putting people first" it stresses. By putting people first, we should set the goal of realizing comprehensive development of the people, persistently give top priority to the fundamental interests of mass people, base the efforts of seeking and promoting development on realizing, maintaining and developing the fundamental interests of mass people, constantly adhere to the principles of respecting people, caring about people, understanding people, loving people, liberating people and developing people, encourage the development fruits to benefit all the people, pragmatically protect people's economic, political and cultural rights and interests, create the social environment where people can give full play to their intelligence and wisdom, and constantly meet people's increasing material and cultural demands and promote people's liberal and comprehensive development as the goal and destination of economic and social development[2].

Guided by the Scientific Outlook on Development, the level of people's comprehensive development becomes the fundamental standard measuring the economic and social development, which rectified the problems that the traditional development outlooks only focus on materials instead of people and give priority to materials instead of people with the phenomenon of materializing people. The Scientific Outlook on Development has answered a series of fundamental questions. According to the Scientific Outlook on Development, development itself is not the destination; the goal of development is not for development, but for people's development. Development targets people, as it is to gradually meet their basic demands, enable people to give full play to their capacities, realize their own value, highlight people's principal position and stress on people's value and dignity. In this sense, the Scientific Outlook on Development shifted the focus of development to "human beings."

II. The Spiritual Substance of Scientific Development Is to Promote and Realize Human Rights

In October 2003, the Third Plenary Session of the 16th National Congress of the Communist Party of China set the Scientific Outlook on Development as the guideline of the Communist Party of China for the first time, namely, "adhering to the principle of putting people first, establishing comprehensive, coordinative and sustainable development

1. Hu Jintao: *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 at the 17th National Congress of the Communist Party of China*, October 15, 2007.

2. Li Xingguo, Jiang Wenfu, Deng Kunjin: *Scientific Outlook on Development in Philosophic Vision*, *Philosophy Study*, Issue 11, 2006, P115.

outlook and promoting comprehensive development of the economy, society and the people." In March 2004, the Second Session of the 10th National People's Congress examined and approved the new amendment of the Constitution, adding "the State respects and protects human rights" into the Constitution. Though the time-based sequence seems to be fortuitous, it actually reflects that the Communist Party of China and the Chinese government have a brand-new and deep understanding the relations between the Scientific Outlook on Development and human rights: the spiritual substance of scientific development is to promote and realize human rights.

The reason why the Scientific Outlook on Development stresses on "putting people first" is not simply to mobilize people's enthusiasm in economic construction. More importantly, it has the mission of liberating people and developing people. Just like what Marx said, the ultimate goal of social development is to realize the liberal and comprehensive development of the people. Viewing from the Scientific Outlook on Development, economic growth is simply measure to realize people's comprehensive development. "Putting people first" encourages respecting and caring about people, and making people the development target, instead of the tool or measures. Economic development, political development and cultural development are all for people, which substantially target for caring about people, increasing people's welfare, protecting people's happy livelihood and protecting people's rights and dignity as human beings.

Renowned economist and Nobel laureate Amartya Sen pointed out that development is the expansion of people's freedom; realizing people's freedom is the ultimate goal of development, as well as the important method to promote development[1]. This is Amartya Sen's illustration on development from the angle of economics. Viewing from angle of law, the concept of "putting people first" actually means to give priority to people's rights and freedom. We can say the outlook is "putting human rights first" so as to distinguish it from traditional outlooks of giving priority to materials. It uses the realization and realization levels of human rights to evaluate the goals, processes and results of development. This way, we can fundamentally clarify the relations between development and human rights.

First, development is the measure to realize human rights and the ultimate goal of development is to promote and realize human rights. The realization of human rights should be based on development. Only when the politics, economy, culture and society fully develop, can human rights protection have a solid base, can the political right, economic right, cultural right and social right, as parts of human rights, be fully protected and can we constantly expand the spectrum of human rights on the basis of development. In comparison, the previous traditional development outlooks failed to consciously set human rights as the

1. Amartya Sen: *Development as Freedom*, translated by Ren Ze and Yu Zhen, China Renmin University Press, 2002.

ultimate goal of development, and only the Scientific Outlook on Development makes "putting people first" its basic precondition, stressing the comprehensive development of economy, society and the people and setting human rights as the ultimate concerns of development.

Second, the realization level of human rights is an important standard to measure development. There are many standards to evaluate development, but human rights standard is the most major and the most important one. The human rights standard highlights the importance of a series of values such as equality, justice and efficiency. Because of the establishment of human rights standard, development cannot focus only on material profits, but should target on people's welfare and the realization of people's rights and freedom. Without human rights standard, development may drift off the right course and become unsustainable[1]. In this sense, the Scientific Outlook on Development is the innovative theoretical fruit combining human rights with development. By summarizing the development experience of various countries, it bypasses traditional outlooks on development and sublimates various new development outlooks. The Scientific Outlook on Development has pushed forward the new development of human rights and development theories worldwide.

III. Scientific Development Can Never Rely on So-called "Low Human Rights Advantage"

During the time when the traditional development outlooks prevailed before the emergence of various new development outlooks including the Scientific Outlook on Development, people purchased development, but at the same time, blocked development, forming the "paradox of development." Development was in deep dilemmas both theoretically and practically. On the one hand, predatory development destroyed the natural environment, deteriorating people's living environment; endlessly abusing the existing resources also greatly reduced the resource reserves on which our descendants rely for development, leading to the problems such as unsustainable development[2]; on the other hand, it also led to dissimilation of human beings and loss of freedom. Just like Herbert Marcuse, the representative figure of Frankfurt school, criticized that modern advanced industrial society successfully oppressed the negative, critical and surpassing thinking deep in people's heart, making the society a one-dimensional society; people in such a society also became the callous one-dimensional people[3] who lost their freedom and creativity and did not think

1. Yuan Li: *Viewing Human Rights with Scientific Development*, *Journal of Xinjiang Police Officers' Academy*, Issue 1, 2009, P37.

2. Yang Ying and Wang Fumin: *The Philosophic Dialogue on the Scientific Outlook on Development*, *Philosophy Study*, Issue 11, 2009, P12.

3. *One-Dimensional People: Studies in the Ideology of Advanced Industrial Society*, translated by Liu Ji, Shanghai Translation Publishing House, 2008.

about or chase new life other than their real life.

Marcuse profoundly disclosed and criticized modern advanced industrial society, which can also enlighten China in contemporary age. Of course, China has different national conditions from those of advanced industrial societies. But we might need to criticize and prevent so-called "low human rights advantage."

The so-called "low human rights advantage" refers to the practice of cutting production costs by means of low salary, low welfare, high labor intensity and reduction of the rights and freedoms of workers in other aspects so as to obtain market competitive advantages. It seems that low human rights can accelerate primitive accumulation and can help economic growth[1]. However, the advantage of low human rights and low cost is unsustainable, and such economic growth does not mean maximum of people's welfare. Its result is even the negative growth. Thus, the so-called "low human rights advantage" is never an advantage, but a damage to the human rights of laborers, which goes counter against the Scientific Outlook on Development. The case of employees of some certain group committing suicide by jumping from buildings in succession is an obvious example of the consequence.

Researches on economics show that positive correlations exist between human rights and economic development, namely, "the higher the human rights levels achieve, the more the economy develops." Improving human rights does not hinder economic development; on the contrary, it can provide better environment for economic development. Some scholars point out that "only well development of human rights can promote high growth."[2]

Looking back to the history, the 30 years of China's reform and opening up to the outside world is the period when China's human rights were greatly improved, as well as the time when China experienced rapid economic development. Of course, looking to the future, we still have a long way to go.

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1. Xiong Peiyun: *Bargaining to Have a Future – Special Interview with Professor Qin Hui of History Department of Tsinghua University*, *Nanfengchuang*, Issue 14, 2009. – Such "low human rights advantage" is actually the so-called "comparative advantage" were proud of previously. In recent years, people begin to profoundly reconsider the so-called "comparative advantage" theory.

2. Xue Zhaofeng: *High Achieve in Human Rights Leads to High Growth*, source: http://xuezhaofeng.com/blog/?p=1164, April 23, 2010.

Accelerating Protection of Senior Citizens' Rights in View of Population Aging

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Population aging is an important situation for China in the 21st century. Accelerated population aging has brought about considerable challenges and pressures for its economic and social development, and higher requirements for protecting the rights of the elderly. It's a significant and urgent topic facing the social development of China as to how should the legal rights of the elderly be protected and human rights causes be promoted against the backdrop of enlarging base number of older people and accelerating population aging.

I. Development of Causes for the Elderly is an Important Part of Human Rights Progress in China.

Safeguarding the human rights of the elderly is a requisite for realizing complete human rights. Aside from the general public, special groups are also subjects of human rights protection. Without employment, the elderly faces degradation in physical functions, and the contradiction between lessened income and increased expenses. They are a disadvantaged group in the society; therefore, aside from general human rights, they should be entitled to particular safeguard in senior citizen service, medical care, spiritual health, cultural and sports activities. Only when the legal rights of the elderly are ensured and when they "are entitled to alimentation, sufficient medical care, all kinds of social and cultural activities, sharing information and entertainment," can complete human rights in the real sense of the word be achieved.

The Chinese government has attached great importance to the protection of senior citizens' rights, and has been dedicated to ensuring their rights of equal participation and development by vigorously launching causes for the aged. Particularly in recent years, a series of policies and laws have been promulgated, and meanwhile investment stepped up, and organizations and facilities gradually improved to safeguard the legal rights of the elderly in promoting their causes.

The first measure is strengthening construction of policies and regulations. The National People's Congress and its standing committee, the State Council and relevant departments and committees have successively publicized over 200 laws, regulations and policies in

relation to protecting older people's rights. Currently, a complete system of laws, regulations and policies has been formulated, covering alimentation, medical care, services, spiritual and cultural life and judicial protection for the elderly. The system takes the *Constitution* as its guide, and *Law of the People's Republic of China on the Protection of Rights and Interests of the Aged* as the basis, including various special laws and regulations, administrative rules and local laws and regulations. In addition, China has successively formulated the seven-year development outline for the causes of the aged, as well as "the tenth five-year plan" and "the eleventh five-year plan," gradually including the causes for the aged into the general social and economic development plan.

The second one is gradually improving the social security system for the aged. The basic pension insurance system for urban workers is further improved, and timely and ample distribution of pension to retirees from state-owned enterprises has been achieved. The urban elderly without offspring, spouse and relatives are universally granted expenses required for survival, and rural elderly eligible for "five insurances" (i.e. insurance for food, clothing, medical care, housing, and burial or offspring nurturing) are provided with allowances by public finances. Living expense subsidy and senile allowance system have been established in Beijing, Tianjin, Shanghai, Yunnan, Ningxia, and so on. Progresses are being made in promoting neo-type rural pension insurance, and compensation policies are being studied for farmers whose lands are expropriated. The livelihood of old people in rural areas has witnessed continuous improvement.

The third is gradually establishing a medical and health service system. The basic medical insurance for urban workers covers 55.27 million retirees. The scope of neo-type rural cooperative medical system is being further expanded. The establishment of urban-rural medical assistance system has been stepped up, alleviating the medical burden on the impoverished elderly. Medical and health services for the aged are being strengthened, and health service providers for the aged have all opted for providing convenient and privileged services to the elderly.

The fourth is accelerating alimentation system for the aged. Experiments in alimentation service demonstration have been accelerated nationwide, and construction of alimentation service system has been smoothly under way. The system features household provision as the basis, community as the support and organizations as complementation. The total number of welfare service organizations and facilities for the aged has been greatly increased, and their capacities conspicuously improved. As of late 2009, there are over 36,000 old-age alimentation service providers, 1,611 social welfare institutes, 2.581 million adoption beds, and 175,000 community service facilities in the rural and urban areas across China.

The fifth is redoubling efforts in cultural, educational and other social causes for the aged. Commonweal cultural activity arenas are open to the aged at a privilege. Various

cultural and sports activities are launched. Education for the aged has been developing very quickly and spiritual and cultural lives for them are being diversified. The atmosphere of respecting, caring for and helping the old has been consolidated. Meanwhile, working commission on aging with correspondent agencies has been established at various levels, from the central government to local governments, forming the pattern of "CPC and the Chinese government as the sponsor, non-governmental organizations as the participant and all the citizens as the contributor," and thus ensuring the development of causes for the aged.

Achievement in causes for the aged has been made, because the CPC committee and governmental agencies at all levels have put protection of the senior's rights on agenda and plan a coordinated development of economy, society and population. This indicates that despite the underdeveloped economy, China is committed to protecting the legal rights of one fifth of the world's aged population, and to pushing forward development of human rights causes.

II. To Fully Recognize the Seriousness of Population Aging and Difficulties in Protecting the Rights of the Aged

By the end of 1999, the aged population, i.e., number of old people at 65 and above, had reached 86.79 million. According to UN standards, China has entered aging society. Over one decade since then, the aging process in China has assumed a trend of acceleration. The enormity in base number of aged population and the fast pace in increasing has been unprecedented, far beyond those in developed countries. Currently, the People's Republic of China is witnessing the first boom in aged population increase since its foundation in 1949. And the situation of population aging is very grim.

First, the base number of aged people is enormous. In 2009, the number of old people aged 60 or over has reached 167.14 million in China, accounting for 12.5% of its population. China has become the only country with over 100 million senior citizens in the world, and also the country with the largest aged population. According to related estimates, by 2050, the total number of aged persons is to exceed 400 million, accounting for 31% of its entire population and surmounting the current population of France, Germany, Italy, Japan and Britain combined. In addition, the UN predicted that China might be the country with the largest aged population for the first half of the 21st century, and might be taken over by India to become the second in the second half.

Second, the increase of aged population is fast. From 1999 to 2009, the aged population increased to 167.14 million, with annual growth of 4.1 million in number and 2.5 percentage points in aging degree. The net increase in number of old persons aged 65 and above is 2.59 million, with increase in aging degree by 1.4 percentage points. As against the previous year, the net increase in aged population reached 7.25 million in 2009, with increase in aging degree by 0.5 percentage point, and marking the greatest increase in percentage of

aged population. It is estimated that the first 20 years of 21st century will be the stage of fast population aging for China, with average annual increase in aged population at 5.96 million, an average growth of 3%. And the years from 2020 to 2050 will be the stage of accelerated population aging, with annual increase in aged population at 6.2 million. By 2051, the figure is expected to exceed 400 million. The second 50 years of this century will be the stage of steady-going serious population aging, with the size of aged population at 300 million to 400 million, marking a stable period of highly aged population.

Third, the trend in population senility is conspicuous. With successive economic development, heightened living standards, and improved medical and health care conditions, the average life expectancy in China has been greatly increased. With increase in total number of aged population and longed life expectancy, China witnesses not only accelerated population aging degree, but also even more conspicuous population senility. In 2000, the average life expectancy in China was 71.4 and the senile population aged over 80 reached 11.99 million. In 2009, the former exceeded 73 and the latter amounted to 18.99 million, accounting for 11.3% of the aged population. In the years to follow, the number of old people aged over 80 will be increased by over one million each year, and is expected to exceed 26 million during the "twelfth five-year plan." The population aging has taken a trend toward senility.

Fourth, the number of empty-nest elderly is fast increasing. Empty-nest elderly refers to old people living alone or only with their spouses. Relevant research shows that, the current rate of urban and suburban empty-nest elderly has reached about 50%, up from 38.9% in 2000. In some large and medium cities, the figure is even higher, at 70%. It's safe to predicate that, as the first generation of only-child parents enter old age, progress in urbanization and intensified movement of employable population, the number of empty-nest elderly will further increase, and the contradiction between demand for and supply of alimentation services will be more conspicuous.

Population aging has brought about a major challenge for protecting the rights of the aged, especially when considering the fact that the economic development of China is far lower than that of developed countries while entering the era of aged society. Developed countries generally enter the era when their per capita GDP reach USD 5,000 to USD 10,000, but for China, the figure is below USD 1,000. Even in the developed regions in East China, the figure is a mere USD 3,000. Thus, China is one of the universally acknowledged countries that "get old before getting rich." In addition, the pace of population aging has been quickend. In 20-odd years, the ratio of people aged 65 and above has increased from 7% to 14%. For most developed countries, the process could take half a century. The peculiarities in population aging have made it tougher to protect the legal rights of the aged in China.

1. Greater pressure for pension security. Currently the endowment insurance model applicable in China is combination of social pooling and individual account. As

the supporter-pensioner ratio has plummeted from 10:1 in the past to the current 3:1, the disbursement by endowment insurance faces considerable pressure. Estimates put it that by 2020, the number of elderly on pension in China will exceed 100 million, and the supporter-pensioner ratio will reach 2.5:1. To meet demands for pension security against the boom in population aging, the social security fund of China will have to maintain an appropriate size and revenue level. It is a major topic concerning the practical interests of the elderly to ensure the sustainable development of the pension system. Besides, the coverage of social security in China is relatively narrow and further policy and financial arrangements are necessary for the large number of self-employed individuals and rural residents.

2. Medical care system faces more challenges. The elderly are an important consumer of medical care and health resources. According to statistics by the Ministry of Health, the percentage of old people aged over 60 susceptible to chronic diseases are 3.2 times than that of the entire population, and disability rate 3.6 times than that of the latter. About 2/3 of the remainder of their life beyond 60 are concomitant with diseases. Health care resources consumed by the elderly on average are 1.9 times than that by the average for the entire population. The aggravated population aging, skyrocketing senile population, and ever increasing expenses will bring enormous pressure for medical care security system. In addition, the gross amount of medical and health care resources is relatively insufficient and their distribution uneven, while the increase in medical expenses borne by individuals is too fast. Many aged are faced with the problem of "unaffordable and inaccessible medical care."

3. Contradiction between demand for and supply of alimentation services is conspicuous. The aged have a large demand for daily life, nursing and medical care services. After years of effort, China has established the philosophy of household provision as the basis, community as the support and organizations as complementation to advance socialization of alimentation services and has made praiseworthy progress. However, the alimentation system can not meet the ever increasing demand for welfare services. Currently, the total number of alimentation service providers is only 40,000, with over 2 million beds. For every 1,000 old people, there are only 11 beds. The average is not only far below the figure in developed countries, but also below the average figure of 30-50 beds for every 1,000 old people in developing countries. The difference is obvious. In the meantime, household provision has been highly recognized by the aged in China, while socialized service in this respect is still in inception. Most street and community committees in the cities lack organizations and facilities to provide services for the aged. It goes without saying that those in the rural areas or towns are far below the demand for household provisions from the aged.

It's domestically and internationally acknowledged that the next 25 years will be a critical period for China to cope with population aging. From the present conditions, the challenges and pressures facing with the issue has been more than grim, and our preparation

is not sufficient. Long-term efforts are required to deal with the problems arising from population aging.

III. To Carry out Overall Planning, Highlight the Important Issues and Strive for Better Protection of the Rights of the Aged

The 17th CPC National Congress proposed the objectives of "ensuring education to all those wishing to learn, reward to all those working, medical care to all the diseased, provision for all the aged, and housing to all those without residence." Among them, "medical care to all the diseased" and "provision for all the aged" are undoubtedly forwarded in view of the accelerating population aging and are major long-term commitments for social construction featuring improvement of people's livelihood. In protecting the legal rights of the aged, the requirements from the Central Government should be followed. Overall planning should be implemented, important issues highlighted and efforts should be stepped up for system construction, service security and financial investment to improve the rights of the aged.

1. To improve and implement rights protection system for the aged. The rights protection system for the aged is the basic guarantee for protecting the livelihood and maintaining the legal rights of the aged. The basic pension insurance should be further improved and its normalization should be promoted for urban employees. New types of rural pension insurance systems should be experimented and gradually expanded. The basic medical care insurance system should be further improved. And basic medical care insurance for urban workers and resident, new type of basic medical care cooperation system for rural pension should be further improved and insurance system for basic livelihood perfected so that "all those deserving will be entitled to insurance." Efforts should be made to probe into establishment of livelihood subsidy, senility subsidy, nursing subsidy and livelihood subsidies for the elderly without social security. Remuneration for rural elderly eligible for "five insurances" (i.e. insurance for food, clothing, medical care, housing, and burial or offspring nurturing) should be further improved, to solve basic livelihood problems of the impoverished elderly. Meanwhile, combination and match among institutions should be strengthened and the integrated efficiency of the institutions performed as a systematic whole.

2. To step up efforts to develop provision service for the aged. In recent years, provision service for the aged has formed a development mode featuring household provision as the basis, community as the support and organizations as complementation. This is suitable for the conditions of China and in accordance with its traditions. It is also beneficial for giving full display to advantages of household provision. The practice should be maintained in the long run and perfected during practice. The fundamental status of household provision should be further consolidated, and family members should be encouraged to take care of the aged. Development of community provision service should be launched as important

livelihood projects. Construction of community provision service organizations and facilities should be accelerated, and community service resources should be integrated so as to perfect the provision service network and strengthen the function of communities as provision providers. Construction of provision organizations for the aged should be strengthened; the demonstrative and radiation effects of state or public owned provision organizations should be exerted; efforts should be made to investigate into government purchase of provision services, private operation of public provision providers and public sponsor for private organizations, so as to improve the operational management and services of social welfare organizations. In addition, researches should be conducted for formulation of employment policies for provision services, cultivation of professional nursing and provision talents and training of existing personnel should be stepped up, so as to constantly optimize the staff of provision providers and improve their professional competence and ethics. Systems for social workers should be developed and social working posts designed so as to encourage and attract social workers to services for the old.

3. To increase financial investment in causes for the aged. Protecting the rights of the aged is a commonweal cause, and public finance should take it as a priority. Investments should be further increased in rural provision for the "five insurances" group, minimal livelihood security, new rural cooperative medical care, senility subsidies and other policies, so as to ensure the basic lives of impoverished elderly included in the assistance system. Efforts to ensure availability of financial resources required for construction of rural and suburban homes, activity centers, and comprehensive welfare service organizations for the aged. The number of welfare service organizations and beds for the aged should be further increased. Investment for government purchase of provision services from social organizations should be increased. Policies should be improved and perfected to enable social resources to be engaged in provision services, so as to encourage and guide social capital to enter provision industry, and increase the effective social supply of provision services for aged.

4. To carry forward the traditional "filial" culture. The culture of filial duty surrounding respect and provision for the aged is a traditional virtue of the Chinese nation. Succession and development of filial culture will provide spiritual support in guiding the social members to actively perform social and family duties, and promoting the development of causes for the aged. Efforts should be made for full recognition of traditional filial culture, so as to draw from its advantages, discard its disadvantages, conform it to the modern society and the requirements for development of causes for the aged. Succession and innovation should be combined and cultural construction projects implemented so as to create a satisfactory atmosphere of respecting, caring for and helping the elderly in the society.

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The Environmental Right as a Human Right: Scientific Development and the Protection of Rights

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As environmental issue is attracting domestic and international attentions, protection of environmental right is becoming increasingly important in human rights affairs. Environmental protection involves in economic development and social harmony, influences the maintenance and complete realization of people's rights to health, property and life, and is even related to the future existence of the whole human society. Thus, recognition and protection of environmental right have become an inevitable topic for contemporary human rights protection cause, especially on how to properly deal with the contradiction between environmental protection and economic profits in the process of environmental right protection.

I. Human Right Attribute of Environmental Right

Environmental right has currently become a human right. Article 11 of the *International Covenant on Economic, Social and Cultural Rights* of 1966 declares: "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 *Declaration of the United Nations Conference on the Human Environment* adopted in 1972 points out, "Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – the right to life itself." "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations." In addition, *African Charter on Human and Peoples' Rights* and *American Convention on Human Rights* also affirms the human rights attribute of environmental right. In these clauses, environmental right is positioned as a kind of right with every individual or whole human beings as the main body. The right is in line with the key demand of no discrimination of roles or status for the main bodies in human rights ideology. Besides the international covenants that directly express the human rights attribute of environmental right, there are also a series of covenants that put forward important national

obligations of environmental protection, indirectly evidencing this topic. For instance, Article 30 of *United Nations Charter of Economic Rights and Duties of States* in 1974 puts forward: "The protection, preservation and enhancement of the environment for the present and future generations is the responsibility of all states. All states shall endeavor to establish their own environment and development policies in conformity with such responsibility." *The Nairobi Declaration of 1982* reiterates the spirit of *Declaration on the Human Environment*, further putting forward extensive obligation requirements to the whole world community in various aspects such as international peace and security, technological assistance, natural resource management and environmental planning. Similar requirements can also be found in documents such as the *Rio Declaration on Environment and Development*. These obligations or obligatory requirements legally imply the right or right-related value basis: Only the universal value claims that resort to the common rights of human race have the possibility to impose protection obligations to the state; otherwise, a pure interest claim cannot go beyond the legal barriers of sovereignty and directly propose universal national obligations. The reasons include not only the fact that sovereignty shuts off interest judgment and choice,[1] but also the fact that interest does not have so strong derivation capacity legally. Although disputes still exist to some extent on human rights attribute of environmental right, environmental right as human right and even basic human right is increasingly recognized by human rights protection circle and practice circle.

Differing from the traditional human rights such as right to subsistence, freedom of religious belief, right to vote and human dignity, environmental right has strong public attribute and wide objective coverage, and environmental pollution and deterioration seldom influence only individuals. So, in environmental right infringement realm, group litigation is a popular protection form. Since pragmatic protection of environmental right needs to improve the whole objective situation of environment, environmental right protection is far from the mission that can be undertaken by negative right-infringement litigation and compensation (They are more used to compensate the special damages of environmental right to specific groups in environmental affairs), and should rely on the active efforts from various countries and regions. In other words, specific infringement of environmental right can be compensated through regular human rights protection channels; general damage to environmental right should be eliminated through active cooperation and efforts of all human beings. Here, we can further divide the specific legal structure of environmental right

1. Sovereignty itself means the capacity of rebuilding and redesign. The interests and general rights can be reaffirmed and reselected through legal sovereignty in different political bodies. But it is not the inevitability whether the sovereign has the right to affirm or exclude some certain human right. The issue whether universal human rights can set universal obligations of international law for a country involves in the relationship between human rights and sovereignty and is still in dispute; however, general rights and interests other than human rights obviously lack of such legal capacity.

into two levels of "general environmental right" and "specific environmental right."[1] The former is abstract and overall rights and interests of environment do not have specific right to request; but it can lead to national obligation and play the role of value interpretation through penetrating into related laws and regulations. The subject is actually an indiscriminate abstract person who represents the common environment claim of all human beings; the object of the right is the whole human society, or at least the overall environment level of a large area (the environment level for the dignity of the abstract person in general); the latter can generate specific claim right and has the object of right with clear type and border. Its contents are from the universal environmental demands affirmed by the general environmental right. The two levels are closely linked. Because of the external characteristics and legal structure of environment right, we need to make parallel efforts from various levels to protect environment right. This requires us to have the overall concept of overall coordinated planning, promoting healthy and orderly progress of environmental right cause.

II. Environmental Right Protection and Scientific Outlook on Development

When environmental right ascends to be a human right, its protection should also be lifted to the level of human rights protection. This requires us to establish corresponding values and development outlook. Especially for the protection of general environmental right, the basis of values and development outlook are necessary.

First, pragmatic protection of environmental right needs the values of moderation and temperance. The protection of environmental right requires the whole society to hold the "environmental friendly" development mode and life style; however, the development mode and life style of over-industrialization, extensive growth and over consumption just go counter to the fundamental values of environmental protection. The development mode and life style inevitably penetrate into the political life and policy orientation of a community and, to great extent, directly or indirectly influence the implementation of environmental protection laws, exerting great impact to the fully realization and pragmatic protection of environmental right. In the final analysis, environmental friendly life style requires relative moderation in value pursuance, balancing short-term and long-term interests and paying adequate attention to the potential environmental risks brought by industrialization and urbanization. For some projects that it is hard to accurately measure their environmental risks through sensible calculation, we need to take the steady and prudent attitude, adhering to the

1. There are some domestic scholars who have tried such division measures. For more information, see Zhang Bao: *On the Legal Subject of Environmental Right, Social Sciences (Law)* Edition of Journal of Kunming University of Science and Technology, September 9, 2008, page 1-5; Feng Jiabin: *Right Structure and Legislation Realization of Environmental Right – Reference to the Theory of "General Personality Right" of Germany*, *Journal of Guangxi Administrative Cadre Institute of Politics and Law*, November 2009, page 23-30.

principle of relying mainly on prevention and make remedies subsidiary. Facing the future full of uncertainties, a kind of values of moderation and temperance may pay more attention to the irreversible environmental process, cherishing non-renewable natural resources and preventing the unpredictable huge risks. It especially objects the short-term gambling-like development ambition that seeks only short-term success and quick profits. In the political processes of various levels, as gambling costs cannot be accepted by decision makers but the profits are attributed to decision-making authorities to large extent, such unbalance will lead to increase of speculation. In this sense, values of moderation and temperance need to establish a set of value authority and legal system that can restrain irresponsible risk activities and prevent the activities that do not consider the results, so as to effectively and fundamentally eliminate the deep-rooted reasons that harm environmental right protection.

Second, comprehensive protection of environmental right needs to establish the cooperation-oriented scientific outlook on development worldwide. When coordinated progress of environmental protection and economic development substantially reflects a kind of scientific sustainable development outlook and such development outlook can be accepted by the world community, it should also accordingly enrich its connotation on the global layer. Such development outlook should not set its eyes only on some separate political communities' respect on natural laws and social development rules, and it should also focus on the activities selected while dealing with development issues and the sciences of tactic orientation. To be specific, it is the best tactics of environmental protection and scientific development for various subjects to abandon over-consideration of short-term interests and have deep and sustainable cooperation of mutual assistance. On the layer of globalization, Scientific Outlook on Development is not only the development outlook that can reflect rules, but also a kind of development outlook that calls for cooperation. Science itself requires cooperation, and scientific rules also have the characteristics of universality and entirety. To highly respect scientific rules, human race should conduct deep coordination and cooperation as a whole and cannot be self-contradictory and take actions separately. It is the fundamental ideological requirement of the global environmental protection cause to conduct international cooperation according to judgments, analyses and arrangements that are in line with scientific rules, be ready to make concession and compromise on important issues to coordinate consensus from different parties so as to avoid shackles of rigid political and economic standpoints.

III. Environmental Right Protection Practices: Coordinating Relations of Environmental Protection and Development

With environmental pollution becoming a global issue, environmental right protection practice of the contemporary age has been deeply embedded in the background of global

cooperation. Against the background, the basic framework of environmental right protection covers two layers: global environmental protection plans, formulation and adjustment of global environmental criteria, international division of work in environmental protection, implementation and supervision of national obligation of environmental protection and settlement of international environmental disputes; as well as the establishment of domestic legal system of environmental right protection, formulation and implementation of policies and support and development of environmental protection technologies and environmental protection industry. Nowadays when the process of globalization is being increasingly deepened, every country is restrained by a series of international treaties and obligations; its activities and capacities are also influenced by international political and economic orders, common technologies and customs and institutional arrangements. Thus, we cannot look on a country's environmental right protection in isolation. For instance, one of the reasons of the status quo of the environmental pollution in some developing countries is that developed countries transfer their high-pollution industries to developing countries; another example is that developing countries are facing intellectual property barriers from developed countries in obtaining environmental protection technologies. Intellectual property right negotiations and cooperation are also closely related to the global political and economic orders. Thus, we need to observe the operation of environmental right protection mechanisms from various layers as a whole.

In the current environmental protection practices, the protection of environmental right is launched through various mechanisms internationally and domestically: Internationally, a series of global and regional intergovernmental treaties and declarations firstly put forward environmental protection obligations and requirements of different extent; secondly, a large amount of international agencies and non-governmental organizations actively launch environmental protection work. These agencies and organizations include but are not limited to United Nations Environmental Program, Environment Liaison Center International, Greenpeace, The International Union for Conservation of Nature, The Wetlands International Union, etc. They conduct environmental protection work through various channels and mechanisms, mainly including: (1) participating in formulating international treaties, declarations, standards and other documents related to environmental protection; (2) organizing forums and conferences to promote environmental protection exchanges and strengthen activity promotion; (3) persuading International Monetary Fund and World Bank to adjust their financial policies and conduct project reforms; (4) supervising and urging governments of various countries to implement their internationally legal obligations in environmental protection and assessing environmental protection work in various countries; (5) collecting and providing environment-related information and providing various countries and regions (especially developing countries) with technology and resource supports in

environmental protection cause; (6) assisting in resolving international environmental disputes, and so on. Meanwhile, many countries and regions are working hard to deal with a series of environmental protection affairs through international cooperation. Domestically, many countries and regions also attach increasingly great importance to environmental protection cause and environmental right protection through adopting a large amount of parliament legislation and administrative regulations, formulating a series of standards and policies of environmental protection and establishing corresponding implementation departments. Between the international and domestic layers, we need a series of mechanisms to link domestic environmental protection system with the requirements of undertaking internationally legal obligations and accepting supervision from international communities. The set of mechanisms are being gradually established, which include the requirements of information publicity to some extent, pertinent assessment of the performances of environmental protection and the orientation policies of international funds and project investments, etc.

Though environmental protection and environmental right protection cause have been extensively launched and actively promoted worldwide, the cause is not that satisfying in some areas. The most important points include: First, the fundamental protection framework of environmental right still lack key elements. To large extent, the protection of environmental right needs to change development mode and adjust operation of economic system. Economic system is linked with political forces to establish a comparatively strong interest group, leading to the fact that the environmental protection process worldwide is frequently restrained by some economic interest chains. It is very important to establish an environmental protection decision-making and implementation system that can effectively eliminate and reduce the influence of interest groups; second, environmental right protection needs global cooperation. However, because of the different interest considerations of various countries and the lack of trust, the cooperation process is not well coordinated, just like prisoners' struggle while in difficult scenario, leading to the fact that some effective cooperation cannot be easily launched. The settlement of many international environmental protection problems are facing high coordination costs; third, domestic legal system construction related to environmental right protection is not perfect. It does not simply require task assignment and administrative accountability in public law, or right defining and responsibility ascription in private law; it needs a kind of complete administrative planning legal system with executive forces so as to realize the environmental planning that consists of a large amount of indices and complicated process. But domestic and overseas situations show that such planning legal system still has a large room for improvement. Take China for example, not only the scientific nature and executive force of the country need strengthening, but also the most direct judicial protection channels such as the group litigation of

environmental protection are not full launched. One of the reasons is the contradiction between environmental protection and local economic development. All these inadequacies force us to think: How should we meet the increasingly urgent demand of right protection in institutions?

On this issue, we need to link up the values of moderation and temperance and cooperative and coexisting development outlook in the process of institutional construction. We cannot do without development, but as well, cannot one-sidedly stress on development. Development-related issue cannot be determined by one person. Deep discussion and consultation of various participants are usually more effective than one-sided stress on moderation and temperance. Those who have the capacity to cause environmental problems are usually not common people, but the groups that possess certain economic power, political influences or administrative powers. Even if we can find a kind of system that can balance the risks and interests of political, administrative and economic decision makers, it is very difficult to rule out the possibility that these progressive people with exploration capacity choose to gamble at risks, especially in the comparatively blundering atmosphere and increasingly modernized life style. We need to establish a comparatively balanced cooperation structure in various decision-making layers, which consists of progressive people with exploration capacity, prudent and moderate people who can keep well balance, representatives who insist on economic development, increasing economic revenues and promoting social prosperity, representatives who stress more on environmental protection, especially citizens' environmental right protection, representatives who benefit from the structure, and those who are influenced by the structure. This way, we can make overall decision making progress more reliable and balanced through dialogues and consultations. If we can establish such a cooperative and consultative decision-making mechanism internationally, domestically and in grassroots, we can not only make decision-making process more prudent and wiser, making it less partial to some certain interest stance and less risk-oriented, but also repeatedly strengthen the science nature of decision making in the process of constant suspicions and discussion. The increase of the scientific nature itself is the necessary restraint of blind enthusiasm. Meanwhile, in such a cooperative decision-making mechanism, we can improve the representativeness of interactive structure through establishing certain accessing procedures. Thus, in the process of establishing a scientific, prudent and harmonious decision-making mechanism, we can gradually discover the representation mechanism suitable to China's situation so as to solve the most important representation problem in right and interest protection such as environmental protection group litigation; meanwhile, the spirit of consultation, communication and integration formed in the cooperative decision-making mechanism can also lay a sound basis to effectively solve the group incidents and promote the settlement of infringement disputes of specific

environmental right. Finally, such a cooperative mechanism also highly respects wishes of various groups, respects their principal status of active actions, and is genuinely in line with the fundamental value recognition of human rights protection.

In general, environmental right has become an important type of human rights; environmental right protection not only requires us to set our eyes on the concrete remedy system arrangement of right infringement, but also allows us to expand our vision, to find out the in-depth contradictions under the environmental right protection, to hold the value orientation of moderation and temperance and to set up the development outlook of respecting the scientific rules and stressing on multi-party cooperation, so as to promote institutional construction of environmental right protection in an open and consultative atmosphere.

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Scientific Development and Gender Equality

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Promoting gender equality has become a serious issue that draws increasing attention from the international society. It is also an important cornerstone marking the progress of human civilization. In contemporary China, respecting and guaranteeing human rights and further promoting gender equality are the basic requirements for pressing ahead with scientific outlook on development. Women's human rights are an inseparable and indispensable part of human rights. China is the most populous developing country in the world with women accounting for about half of the 1.3 billion population. Promoting gender equality and safeguarding human rights of women have paramount importance for China's development, and essential influence on the human progress.

I. Equality between Men and Women and Anti-gender Discrimination

Equality between men and women is also defined as gender equality. The first UN Conference on Women held in 1975 passed *Mexico City Declaration*, in which equality between men and women was defined for the very first time: "Equality between women and men means equality in their dignity and worth as well as equality in their rights, opportunities and responsibilities." *Beijing Declaration and Platform of Action* passed at the fourth UN Conference on Women in 1995 associated equality between men and women with the issue of human rights directly for the first time. It was pointed out that "equality between men and women is a matter of human rights and a condition for social justice." The definition and explanation of gender equality given in these international human right documents have exerted an important influence on promoting gender equality and women's development in each country.

Gender equality is a neutral, unbiased concept by its literal meaning. It implies that both males and females have equal opportunities to enjoy their respective right, tapping their potentials, unleashing their talent so that they can participate in political, economic, social and cultural development and enjoy the productive outcomes. However, essentially, if we take a close look, it is evident that gender equality refers more to assertion of women's human rights than otherwise. Because over the long course of history, women had always been at a disadvantageous position, they were deprived of their rights due to discrimination

in culture, system, behavior and attitude. In reality, women's equality is still far from being accomplished. As pointed out in *Program of Action for the Second Half of the United Nations' Decade for Women*, passed at the second UN Conference on Women in 1980, equality not only refers to legislative equality and elimination of legislative discrimination, but also includes the right, responsibility and opportunity for women – as beneficiaries – to be actively involved in development." Therefore, the ultimate goal of gender equality is to accomplish women's human rights comprehensively.

Gender equality is an issue of human rights and promoting gender equality is bound to require against gender discrimination. Gender discrimination is a product of gender inequality and the fundamental reason for gender discrimination is that women had never been treated as an equal "being."

In the course of human history, the adoption of *Universal Declaration of Human Rights* in 1948 was the mark that anti-gender discrimination has advanced into a whole new phase of development. For the very first time, *Universal Declaration of Human Rights* explicitly pointed out, from the perspective of mankind that "All human beings are born free and equal in dignity and rights." To put the principles of equality and non-discrimination of *Universal Declaration of Human Rights* into practice, the United Nations has passed a series of conventions and declarations of universal human rights regarding anti-gender discrimination. In these documents, *Convention on the Elimination of All Forms of Discrimination against Women* in 1979 is an important milestone, which for the first time, defined "discrimination against women" in the form of international laws as "…any distinction exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." This definition points out that the purpose of sexism is to deny the right and freedom of women.

Another significant document on universal human right regarding anti-gender discrimination is the last document *Vienna Declaration and Program of Action* at the second World Conference on Human Rights in 1993. In this document, it was first explicitly proposed that "the eradication of all forms of discrimination on grounds of sex is a priority objective of the international community." It required women's rights to be considered as the priority of each national government and United Nations. This marks that anti-gender discrimination and promoting gender equality have made the way into the mainstream of universal human right campaign.

In 1995, *Beijing Declaration and Platform of Action* adopted in the fourth World Conference on Women in 1995 re-emphasized the importance of "preventing and eliminating all forms of discrimination against women and girls," and proposed that the advancement

of women and the achievement of equality between women and men are a matter of human rights and a condition of social justice and should not be seen in isolation as a women's issue.

If women fail to enjoy equal rights, human rights would then just exist unilaterally and gender relation is unequal. Thus safeguarding women's rights is to promote gender equality.

These documents on universal human rights in which the relation between gender equality and human rights is elaborated; and gender discrimination is defined, have provided international standards for international community to understand women's rights and eliminate gender discrimination.

II. Laudable Achievements Made by China in Promoting Gender Equality

Over the past 61 years since the founding of the People's Republic of China, Chinese government has always considered achieving gender equality as a primary goal of socialist construction. The social status of Chinese women has made great improvements and the endeavor of liberating women is an accomplishment universally acknowledgement. After successful hosting the fourth World Conference on Women, Chinese government has been seriously implementing *Beijing Declaration and Platform of Action*. Efforts have been made to increase the guide on building the guarantee mechanism for women's rights and a series of measures have been adopted in legislation, law enforcement and judiciary. Unsurprisingly, new achievements have been made.

1. The Nation Makes Equality between Men and Women as the Constitutional Principle and Basic State Policies

Gender equality is a basic principle for China's constitution. The four sets of constitution rolled out after the founding of the People's Republic of China included the principles of gender equality. *The 1982 Constitution* saw new developments of gender equality: "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 cadets from among women." The regulation on the principles of gender equality and women's rights in constitution provides the highest legislative foundation for gender equality.

China attaches great importance to legislative protection of women's rights. After the founding of the People's Republic of China, legislation for women has always been one of the brightest characteristics of Chinese legislation. Since the 1980s, our national legislative organization has strengthened legislative protection of women's rights. In 1992, *Law of the People's Republic of China on the Protection of Rights and Interests of Women* was introduced. It was the first comprehensive set of laws protecting women's rights, fully justifying the constitutional principles of gender equality and anti-gender discrimination. In

2005, the 17th Plenary Meeting of the Tenth Standing Committee of the National People's Congress passed *Decision on Revising "Law of the People's Republic of China on the Protection of Rights and Interests of Women*." The revised version of *the law of Protection of Rights and Interests of Women* incorporated "achieving gender equality is the basic national policy" as general rules and specified that "the nation shall take necessary measures to gradually improve various systems for the protection of rights and interests of women and eliminate all kinds of discrimination against women." The Chinese government regarded gender equality as a basic state policy and took women's human rights as a priority into consideration.

In contemporary China, a comprehensive set of legal and legislative system and local laws and regulations that protects the rights and interests of women and promotes gender equality and development of women, based on the *Constitution*, revolving around the law on the protection of rights and interests of women and incorporating civil, criminal, marital, labor and maternal & infant health laws has been established.

2. The Nation Attaches Importance to Promote Gender Equality in Development

The nation has drawn up and implemented the program of actions for women's development, incorporating women development into the overall scheme of economic and social development. The first set of program of action – *Program of Action for Women's Development in China (1995-2000)* aimed to promote gender equality was drawn up in 1995. In 2001, to meet the requirements for national economic and social coordinated development and requirements of *United Nations Millennium Development Goals, Program for the Development of Chinese Women" (2001-2010)* was rolled out. Central and local administrations are increasing financial investment in implementing the program of action for women's development each year.

National Human Rights Action Plan of China introduced in 2009 further pointed out "The state will continue its efforts to realize the goals stated in the *Program for the Development of Chinese Women (2001-2010)*, promoting gender equality as well as guaranteeing women's legitimate rights and interests."

The nation emphasizes data collection and analysis research on the status quo of women, establishing organizations to monitor and assess implementation of *the Program*. The concerned national departments are continuously improving statistical system, increasing statistical indicators by gender, thus the system of statistics by gender is constantly improving.

From 2001 onwards, Chinese government has considered gender as one of the criteria of monitoring poverty in rural areas and emphasized gender equality in poverty alleviation. In recent years, the nation has increased financial investment in assisting the poor people and drawn up differentiated policies in eliminating the poverty of women. Efforts are made to

support the development of impoverished regions in various ways such as introducing small loans, export of labor services, and offering specific assistance, which help rural women to get rid of poverty, making poor women the receivers and direct beneficiary of resources specifically aimed for assisting the poor.

3. The Nation Undertaks Obligations under International Human Rights Law; Constantly Improving the Legal System for Anti- gender Discrimination

Since the 1990s, China has introduced and revised many laws. The law reform, on the one hand, is the internal requirement for developing protection of human rights of Chinese people; on the other hand, aims to reflect the anti-gender discrimination principles in the convention on universal human rights in the domestic laws.

Firstly, in 1980, China approved *The Convention on the Elimination of All Forms of Discrimination against Women* passed by the United States in 1979, becoming one of the first countries in approving the convention. Chinese government has already submitted the national report on implementations of *The Convention on the Elimination of All Forms of Discrimination against Women* for six times; China rolled out *Law on the Protection of Rights and Interests of Women* in 1992, making comprehensive and detailed regulations on the protection of equality of women; in 1994, Article 12 and Article 13 in *Labor Law* introduced by China further reasserted the principles of equality and anti-gender discrimination and in Chapter 7, it specified "Special Protection for Female Employees and Child Labor."

Secondly, the *Marriage Law* revised in 2001, for the first time, explicitly included the regulations on banning family violence, strengthening the protection of women's rights in terms of properties of husbands and wives and divorce. The *Law of the People's Republic of China on Land Contract in Rural Areas* rolled out in 2003 attached importance to the right of married, divorced and widowed women to equal acquisition of land. This, to a certain extent, can be considered as the new legislative measures in fighting sexism after China approved *International Convention on Economic, Social and Cultural Rights* in 2001.

Thirdly, in 2005, China approved *The Convention on Objection to Employment and Professional Discrimination*, further strengthening the principles of anti-gender discrimination in legislation. For starters, the *Law on the Protection of Rights and Interests of Women* newly revised in 2005, for the first time, made it legally explicit that "gender equality is the basic state policy." It stressed the rules of fighting employment discrimination and family violence; banning sexual harassment for the first time, which is an important breakthrough in laws against gender discrimination. Then, Article 3, Article 27, and Article 62 under *Employment Promotion Law* passed in 2007 specifically defined the categories and scopes of principles of fighting sexism and banning discrimination; what's more, Article 42 and Article 52 in *Labor Contract Law* further reasserted the anti-gender discrimination

principles and special protection of female employees, stating clearly that the labor contract shall by no means be terminated by the companies when female employees are going through pregnancy, natal, and lactation periods.

Fourthly, it was stated in *The Decisions on the Issue of the Number and Election of Candidates of the 11th National People's Congress at the Fifth Plenary Meeting of the 10th National People's Congress* that, "among the representatives of the 11th National People's Congress, the number of females shall be no less than 22%." Specific rules regarding the proportion of female representatives were, for the first time, stated in the law. This move reflects the spirit of Article 42 in *The Convention on the Elimination of All forms of Discrimination against Women* of the UN, making special measures as the tentative strategies in promoting gender equality.

4. Mechanism for Protection of Women's Human Rights is Developed and Improved on Both Governmental and Non-governmental Levels

In 1993, the National Coordination Committee on Women and Children under the State Council was promoted to National Working Committee on Women and Children under the State Council. Each level of judicial administrations in China provides legal assistance to those women whose rights and interests have been violated and helps them to safeguard their legal rights and interests by means of legal consulting and filing lawsuits on behalf of them. By the first half of the year 2009, China has already established a total of 3,276 legal assistance organizations, which have helped 335,145 people; among whom, 88,740 were women, accounting for 26.5% of the total.[1]

More than 3,000 courts that safeguard the rights of women have been established in China's judicial system to specifically deal with civil cases of protecting rights and interests of women. Local judicial departments have forged cooperation with Women's Federation, established Domestic Violence Injuring Assessment Center, 110 Call-in Center for Family Violence, Station for Complaints of Family Violence, Women's Help Station, Legal Aid Center of Women's Rights and Interests, among many others. In November 2001, China established national coordination team that comprises 19 departments to safeguard the rights and interests of women and children. So far, organizations aimed at protecting rights and interests of women and children have been set up in all municipal governments above town level and the investments required are included in the budget of the local government.

China attaches great importance to making effective use of the role of non-governmental organizations. All-China Women's Federation, All China Federation of Trade Union, and China Disabled Persons Federation are all actively involved in promoting gender equality.

These mechanisms and measures have greatly promoted equality in law and in practice,

1. "Statistical Analysis of National Legal Assistance in the First Half of 2009," the website for Ministry of Justice of the People's Republic of China is: http://www.moj.gov.cn/flyzs/2009-08/27/content_1144496.htm.

making the development of women's rights among the top in developing countries with unique advantages compared with industrialized nations.[1]

III. Major Challenges Facing Gender Equality and Countermeasures in China

1. Major Challenges Facing Gender Equality in China

Because of restrictions in economic and social development, as well as other factors, protection of women's rights and interests in China is still faced with many new emerging problems. The inherent practice of gender inequality over the long course of history is still standing in the way of women achieving their rights. The rights of women are also confronted with many challenges in actual social transition.

1.1. Skewed sex ratio.[2] The skewed sex ratio at birth will affect social harmony and stability. The relatively high skewed sex ratio at birth can be largely ascribed to the traditional mindset of "preferring boys to girls," which on some level, reflects the severity of the issue of gender discrimination.

1.2. Gender discrimination in employment. For instance, some companies refuse to hire females, or deliberately lower the ratio of women in recruitment. Women account for a smaller proportion in employment.

1.3. Males and females fail to retire at the same age. The 5-year difference in retirement age between men and women will cause adverse effects on women's income, and exert negative influence on women's political involvement and other political rights such as serving in public office.

1.4. In rural areas, women's land right and benefits acquired from public-owned economic organizations are jeopardized through means of rural rules, decisions of village meetings and village party committee.

2. Promoting Gender Equality and Women's Human Rights in Development

2.1. Further incorporate human rights into development policies and operations of each level of government. Human rights are closely associated with development; it is the basis and goal of development. Only developments that are based on human rights are scientific developments. Gender equality is the condition for the issue of human rights and achievement of social justice and a prerequisite for people-oriented sustainable development. Scientific development, however, entails changes to be made to tackle inequality in human rights, such as inequality, discrimination, irresponsibility and failure to cooperate. Realizing the values and esteem of men and women is the shared goal of human rights and scientific development. Further incorporating human rights into development policies and operation of each level of

1. "China's Gender Equality and Status Quo of Women's Development," 2005.

2. It was pointed out in "Statistical Report on National Economic and Social Development of the People's Republic of China in 2009" that China's sex ratio at birth is 119.45.

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government entails:

Firstly, use human rights standard as the guide for drawing development policies and plans. "The state respects and protects human rights" is the fundamental principle of China's Constitution. This principle strengthens the responsibility of the nation in protecting human rights, making human rights the starting point and foothold of each governmental operation. Each development policy shall be devised in alignment with the standard of human rights and promote the implementation of "National Human Rights Action Plan for China" in practice.

Secondly, each level of government shall pay more attention to the issue of women's development. Incorporating gender awareness into mainstream decision-making has been the global strategy of the UN to promote gender equality since 1990s. Gender awareness requires gender sensitivity in decision-making; analysis of the influence of development policy on men and women and consideration on whether the development is good for eliminating discrimination and promoting gender equality. In development, more attention shall be paid to disadvantaged women, helping them have equal opportunities to right and ability to enjoy resources.

2.2. The Labor Law shall emphasize special mechanism for protection of women, such as specifying quota system for employment, constructive discharge system and strengthening the liability for violation.

2.3. Perfect social securities system. The society will share the costs of birth, creating conditions for women's equal access to employment.

2.4. Raise the operability of *Law against Gender Discrimination*. Explicit regulations regarding "gender discrimination" should be made in *Law on the Protection of Rights and Interests of Women* on the basis of the definition of "gender discrimination" in *The Convention on Eliminating All Forms of Discrimination against Women* laid out by UN that China joined in 1980. Then, the concept of sexual harassment should be clarified, drawing on the experience of modern countries. The proof of sexual harassment shall be defined in such a way that it favors women. At last, legislative bodies, means of assistance and legal responsibilities shall be concretely specified to provide timely, effective and convenient means of assistance to women.

2.5. Introduce exclusive *Law against Gender Discrimination* to beef up anti-gender discrimination efforts.

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Scientific Development and Protection of Human Rights

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Human rights and development have long been important issues causing concern in the international community. In the preamble of the *United Nations Charter* issued in October 1945, security, development and human rights have been listed as issues of concern for member states. Article 55 of the Charter has listed the promotion of "higher standard of living, full employment, and conditions of economic and social progress and development" as one of the "conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."[1] The *Universal Declaration of Human Rights* promulgated in December 1948 points out that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" and "the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people."[2] We can see from these statements that "inherent dignity" and equal rights are fundamental substance of human rights, and "the highest aspiration of the common people" includes "freedom from fear and want" – security and material needs. *Declaration of Social Progress and Development* of December 1969 states that social progress and development should be built upon human dignity and respect for values, and ensures the promotion of human rights and social equality[3]. The *Development Rights Declaration* in 1986 further points out that development right is human right that cannot be exploited. Due to this right, every person and people in all countries shall have the right to participate in, promote and enjoy economic, social, cultural and political developments. In such developments, all human rights and fundamental freedom are fully realized. Humans are the subject of development, and therefore should be active participants

1. *UN Charter*, enacted on 24 October 1945. Downloaded from UN website http://www.un.org/zh/documents/charter/charter.pdf on 20 May 2010.
2. *Universal Declaration of Human Rights*, 10 December 1948. Downloaded from UN website http://www.un.org/chinese/documents/decl-con/docs/a-res/217.pdf on 20 May 2010.
3. *Declaration of Social Progress and Development*, 11 December 1969. Downloaded from UN website http://www.un.org.chinese/documents/decl-con/docs/a-res2542.pdf on 20 May 2010.

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and beneficiaries of development rights[1]. The content of the above mentioned documents reflects the tight connection between development and human rights, and it has already become the consensus among various UN member states. The *UN Millennium Development Goals* issued in September 2000 has listed eight human rights indicators including eradication of poverty and hunger, comprehensive primary education, promotion of equality of the genders and environmental sustainability as common indicators to be promoted by all member states by 2015. It further reveals the international community's recognition of the interdependence between human rights and development[2].

Since 2003, the central government has proposed the governing philosophy based on "scientific outlook on development." It insists on a development philosophy based on being people-oriented, comprehensive, well-coordinated and sustainability. To be people-oriented means that people's interests should be the highest priority in all work, various needs of the people should be continuously met and comprehensive development of the people should be promoted. To be comprehensive means while continuously perfecting the socialist market economy and sustaining speedy and coordinated healthy economic development, we must expedite the construction of political and spiritual civilization. Materialist, political and spiritual civilization can then promote one another and facilitate common development. Sustainability means coordinating harmonious development of humans and nature, handle the relations among economic construction, population growth, resource utilization and environmental protection, and facilitate the society in moving towards productivity development, wealthy living, healthy ecology and civilization[3]. Scientific concept of development stresses the importance of being "people-oriented," and people are the subject of development. The purpose of development is also for the sake of the people. Its content is basically consistent with the international community's concept of human rights and development.

The Macau Special Administrative Region, as part of China, has followed the requests of the central authority to seriously implement the 'scientific outlook on development.' In November 2001, the SAR, on the basis of 'strengthening the economy and sustaining stable growth,' proposed the development direction of 'establishing a structure with the gaming industry as the lead, the service industry as the body and other industries playing the coordinating role' so as to promote enhancement of "people's living quality." With the

1. *Development Rights Declaration*, 4 December 1986. Downloaded from UN website http://www.un.org/chinese/documents/decl-con/docs/a-res-41-128.pdf on 20 May 2010.

2. *UN Millennium Development Goals*, first raised at the UN Millennium Leaders' Summit in September 2000. Downloaded from UN website http://www.un.org/chinese/milleniumgoals on 20 May 2010.

3. *Concept of scientific development (feature)*, Xinhua information, Xinhua net. Downloaded from http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/ziliao/2005-03/16/content_2704537.htm on 20 May 2010.

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development of social economy, the government has also proposed the concept of appropriate level of diversity for the economy. In March 2010, the third term of the SAR government proposed the concept of "coordinated development and harmonious progress." It also promoted the construction of a sunshine government and fully tapped into people's views. The governing philosophy of being people-oriented showcased the SAR government's respect for residents' basic rights.

1. Human Rights Protection in Legal Areas in Macau

On the legal level, the Macau Basic Law, as the foundation of the Macau legal system, fully and comprehensively protects all the basic rights and freedom of Macau residents. Such rights include political rights, individual rights, economic and employment rights, social protection rights, freedom of political participation, freedom of speech, religious freedom, economic freedom, academic freedom, freedom of association, procession freedom and freedom of information etc. Series of legislations and regulations such as the *Civil Code, Criminal Code, Criminal Law to Combat Human Trafficking, Criminal Law against Computer Crime, Labor Relations Law, Employment of Foreign Employees Law, Law to Prevent and Curb Corruption in Private Sector, Publication Law and Internal Security Framework Law* have further ensure basic rights of Macau residents such as the right to live, right to physical and psychological integrity, right to speech, right to freedom, right to fame, right to privacy, right for association and employment rights.

With regards to international law, since the reunification, 20 international treaties were entered into or continued to be in effect in Macau. They include 14 conventions, 4 amendments and 2 agreements. The major ones are conventions related to human rights such as *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Convention Relating to the Status of Refugees and its protocol, Convention against Discrimination in Education, International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination Against Women, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child and its protocol, Convention on the Rights of Persons with Disabilities* etc. In order to ensure implementation and execution of these protective conventions, the SAR government has also formulated relevant supporting laws and regulations, such as the *Recognition and Loss of Refugee Status System and Macau SAR Refugee Identity Card Regulations* etc. The relatively complete legal system offers legal protection to Macau residents from the fundamental level.

2. Human Rights Protection in Social, Economic and Livelihood Areas in Macau

With regard to the society, economy and people's livelihood, since the reunification ten years ago, with the strong and effective support from the central government and the concerted effort of the SAR government and all Macau citizens, significant progress has been achieved. In the first year after reunification, the SAR government successfully reversed the situation of negative economic growth for four consecutive years. GDP rose by 5.7% that year and continued to grow in the following ten years, from 47.2 billion MOP in 1999 to 169.3 billion MOP in 2009[1]. The year on year growth reached double digits. GDP per capita also rose from 110,600 MOP in 1999 to 311,100 MOP in 2009, a jump of nearly three times, bringing Macau to the forefront in Asia.

Economic developments have helped to improve the employment situation among residents. In the past ten years, the unemployment rate in Macau has shown a downward trend. It dropped from 6.6% in the fourth quarter of 1999 to 2.9% in the first quarter of 2010. The labor market is moving towards full employment. The median income among the employed population has also risen from 4,819 MOP in the fourth quarter of 1999 to 9,000 MOP in the first quarter of 2010[2]. The monthly average income of households has also risen from 15,304 MOP in 2003 to 25,250 MOP in 2008, representing a growth of 65%[3].

As for public finances, surpluses were maintained every year. By the end of 2009, the accumulated surplus reached over 100 billion MOP, an increase of almost 7 times compared to before the reunification. Foreign reserve stood at around 150 billion MOP[4]. The relatively healthy economic and financial situation provided positive conditions for the SAR government to promote development of human rights work. While the proportion of people living in poverty in Macau is not high, and the average household income is not low, the SAR government has, in recent years, based on its fiscal surplus, launched various short term measures to assist relevant industries and the least advantaged social groups, so that all the residents can share the fruits of economic progress. For example, the government has launched, for three consecutive years, a "cash sharing scheme" with a total allocation of over 9 billion MOP. It allows all Macau residents, permanent and non-permanent ones, to directly share the fruits of economic developments. Other short term measures launched include the medical cash voucher, old age allowance, first home ownership interest subsidy system and credit guarantee scheme for young people, temporary income subsidy measures for low income makers, subsidized short term training courses for the unemployed and

1. Source: Macau Statistics and Census Services. http://www.dsec.gov.mo/Statistic.aspx, on 25 May 2010.

2. Source: Macao Government Printing Bureau. Downloaded from http://cn.io.gov.mo/BO/StatsC1.aspx on 25 May 2010.

3. Source: Macau Statistics and Census Services. Downloaded from http://www.dsec.gov.mo/Statistic/DistributiveTradeAndPrice/HouseholdBudgetSurvey.aspx on 25 May 2010.

4. Source: Macao Financial Services Bureau. Downloaded from http://www.amcm.gov.mo/economic_statistics/eEconomic.htm on 26 May 2010.

special allowance for school tuition and stationery for students in families facing financial hardship. These measures have addressed demands from different groups in the community. In the second half of 2010, the SAR government will issue disability allowance from 2,500 to 10,000 MOP to persons with different degrees of disability.

When it comes to cultural education work, in the past ten years, the SAR government has continuously increased investment into the education sector. Beginning from the 2007 school year, it has begun the 15 year free education policy, making Macau the first place to launch 15 year free education in the region. School fee and expense subsidies have been offered to families that are outside of the free education network and facing special financial hardship. Other subsidy schemes have been launched to ensure that school-aged children have the rights and opportunity to receive education. In the past decade, government expenses going into free education has increased from 310 million in 1999 to 1.02 billion in 2009, representing a jump of 1.75 times. The average subsidy for each student increased from 6,500 MOP in 1999 to 16,000 MOP in 2009, representing a jump of 1.46 times.

On the other hand, the SAR government is dedicated to enhancing residents' quality, cultural achievement and level of skills so as to intensify Macau's image as a city of culture. The government has collaborated with tertiary and training institutions to promote lifelong learning, continuously intensify and promote the concept of further education and lifelong learning and establish a learning-oriented society and enhance the quality of residents. At the same time, with continuous promotion of high level and international cultural and art activities, the cultural atmosphere and city image of Macau can be enhanced.

The unemployment rate in Macau is relatively low, but the SAR government has launched various measures to assist job seekers find jobs, secure employment and apply for social security. At the same time, together with many groups and organizations in Macau, the government has launched many schemes and services to assist workers find and secure jobs. They include job matching, on-the-job and pre-employment training, mainland internship programs for graduates from tertiary institutions, and employment promotion and training schemes for persons with disabilities etc. These offer better social protection and employment assistance to the unemployed.

The SAR government has set up a rather comprehensive free medical network as fundamental protection for its residents. Beneficiaries include elders, students, teachers and some social welfare workers. In order to further perfect the social welfare system for its residents, the SAR government has, since 2007, begun consultation, research and legislative work for the construction of a two-tiered social security system. The relevant legal documents have entered the final legislative procedures at the moment. In order to coordinate the work of establishing the two-tiered system and ensure there is basic protection for residents' future retirement life, the SAR government has, using the fiscal surplus in 2009, injected 10,000

MOP into every qualified resident's central saving account as the account opening capital.

Under the major principle of maintaining social stability and peace, Macau residents enjoy greater freedom including freedom of the press and speech, freedom to cultural and academic activities, freedom of association and peaceful assembly, and freedom of political participation and election. Since the enactment of National Security Law in March 2009, the right and freedom to peaceful assembly have not been hindered in any way, freedom of speech has not been undermined, freedom of the press has not been interfered with, and residents' criticism towards the government's work has not been restricted. At the same time, access to the internet and email accounts etc have not been limited, and residents can freely express their views on internet forums according to the law. During the direct election for the 4th term of the Macau legislature in September 2009, there were 249,000 registered voters, 123 candidates and the voting rate was 59.9%, all record high figures since the establishment of the SAR.

Another social characteristic of Macau is the great number of associations. They are one of the important forms of political participation and discussion as well as social engagement. According to some incomplete statistics, there are over 4,400 registered associations of various sizes in Macau, where the population is only around 540,000. Between 2000 and 2009, there have been 2,712 newly registered associations[1], and by the end of 2009, there were 973 associations that have completed voter registration and participated in the indirect election of the Legislative Assembly, an increase of 3.5 times compared to 276 in 1999[2].

Continuous improvement and protection of the law and order situation is very important to a tourist destination like Macau. It offers protection to residents' lives and personal rights, and gives assurance to foreign visitors coming to Macau. With a population of only over 500,000, Macau is dedicated to improving the law and order situation. The number of visitors has also been rising continuously every year. It jumped from 7.44 million in 1999 to 21.75 million in 2009[3], representing an increase of nearly three times.

Other than visitors, the mobile population in Macau also includes many overseas employees. By the end of 2009, there were 74,905 overseas employees in Macau[4]. Visitors and overseas employees come from different parts of the world and have different religious beliefs and cultural backgrounds. They live among local Macau residents in peace. There is a coexistence of different ways of life, religious worships and mutual respect. No major social

1. Source: Macao Government Printing Bureau. Downloaded from http://cn.io.gov.mo/BO/StatsC1.aspx on 25 May 2010.
2. Source: Macau Statistics and Census Services. Downloaded from http://www.dsec.gov.mo/Statistic/TourismAndServices.aspx on 26 May 2010.
3. Source: Macau Statistics and Census Services. Downloaded from http://www.dsec.gov.mo/TimeSeriesDatabase.aspx?KeyIndicatorID=16 on 26 May 2010.
4. Source: Macau Statistics and Census Services. Downloaded from http://www.dsec.gov.mo/TimeSeriesDatabase.aspx?KeyIndicatorID=16 on 26 May 2010.

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conflicts have emerged and it fully reflects the harmony in the Macau society.

3. Conclusion

Human rights are fundamental rights enjoyed by the residents of a place. The content of such rights should vary with different foci according to the different developments, economic foundation, quality of nationals and cultural traditions of the nation or area. Macau has gone through its unique development path and its residents have their understanding and demands for basic human rights with local characteristics. There are unique features to the protection of human rights as well. At the same time, according to Maslow's hierarchy of needs theory, with further developments in social, economic and cultural areas, residents' pursuit of basic individual rights would also be enriched and enhanced. People's demand for better life and public services would continue to evolve and the human rights work in Macau will continue to improve.

In the past decade since the reunification, the Macau SAR has done a lot of work in terms of protecting residents' basic rights and freedom. Such efforts are well-recognized. With further development and progress in Macau, we expect and believe that the SAR government will, based on the overall development of the society, continue to insist on using the concept of scientific development as the guiding ideology. It will insist on using the people-oriented governing philosophy, continuously improve and enhance the quality of public services and launch timely policy measures to address the needs for basic rights and protection of freedom among its residents. While promoting sustainable development, Macau will also further develop human rights.

(The author is President of Macau Development Strategy Research Center.)

Measures for Ensuring the Protection of the Right to Development against the Background of Economic Crisis

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China

Since Kéba Mbaye, President of the Supreme Court of Senegal and jurist, adopted the concept of "right to development" in a speech to the United Nations Commission on Human Rights in Strasbourg, France in 1972 for the first time, "right to development" has been stated or reiterated in relevant declarations and resolutions of the United Nations; it has also been acknowledged by some regional documents on human rights. The right to development belongs to human rights, which is clear and undoubted. However, the realization of the right to development faces many difficulties. Under the background of the existence of economic crisis and a harsh situation of economic recovery, the realization of the right to development is confronted with huge challenges.

I. Basic Features of the Right to Development

What is the right to development? China Encyclopedia of Human Rights has given the following interpretation: the right to development means "a right for individuals, nations and countries taking part in the development of economy, society, culture and politics in a positive, free and significant manner and equally enjoying benefits brought by development."[1]

It is an evolution process for the right to development to be recorded in international human rights documents. Some scholars held that 1984's *Universal Declaration of Human Rights* did not include the right to development; however, various deductions about the right to development can be made from some articles, such as Article 25 to Article 28 in *Universal Declaration of Human Rights*.[2] Then, 1966's *International Covenant on Economic, Social and Cultural Rights* and *International Covenant on Civil and Political Rights* stated this concept clearly and bestowed legal validity on it. Article 11 of the former acknowledged that "the present Covenant recognizes the right of everyone to all adequate standards of living for

1. Wang Jiafu & Liu Hainian (eds.): *China Encyclopedia of Human Rights*, Encyclopedia of China Publishing House, 1998 edition, page 112.

2. See Nica Schrijver, The Evolution of Sustainable Development in International Law: Inception, Meaning and Status, Martinus Nijhoff Publishers 2008, p. 77. Article 25 to Article 28 of *Universal Declaration of Human Rights* stipulated: everyone has the right to a standard of living, the right to education and the right freely to participate in the cultural life of the community and everyone is entitle to a social and international order.

himself and his family." Article 1 of the both Covenants stated that all people have the right of self-determination. By virtue of that right, they freely determine their political status and "freely pursue their economic, social and cultural development."(Paragraph 1)

In 1986, *Declaration on the Right to Development* was passed to make special regulations on the right to development. Its Article 1 states clearly that "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;" (Paragraph 1) "the human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources." (Paragraph 2) *Declaration on the Right to Development* does not have legal validity as a declaration. However, its influence and status in the evolution process of right to development cannot be disregarded. Moreover, it should be deemed as the standard to be realized and followed by countries and the international community. Based on this, the exposition of this paper will not go on without this Declaration.

From the above concept of right to development and related statements of international human rights documents, we can find that the right to development has following basic features.

1. The right to development is an inalienable human right. "Inalienable" means any forcible ways cannot be adopted to take away this right without the approval of laws.

2. The right to development is an independent human right and necessary premise for the realization of other human rights. Only in the process of development can all human rights and basic liberty be fully realized.

It should be mentioned that Chinese scholars hold different views on whether the right to development has double natures of individual human right and collective human right. Some scholar holds that right to development is both an individual human right and collective human right of a country or nation.[1] However, some hold that it is controversial to identify right to development as collective human right or individual human right.[2]

Perhaps we can say that the right to development is individual human right that contains the nature of collective human right. However, no matter right to development is individual or collective; countries should undertake the main responsibility for the protection of its realization.

1. Wang Jiafu & Liu Hainian (eds.): *China Encyclopedia of Human Rights*, Encyclopedia of China Publishing House, 1998 edition, page 113.
2. Li Buyun (ed.): *Human Rights Law*, Higher Education Press, 2005 edition, page 335.

II. Basic Conditions for the Realization of Right to Development

Based on the basic features of the right to development, its realization needs the interaction of subjective and objective conditions.

1. Subjective Condition

The subjective condition refers to the acknowledgement or recognition of the right to development from countries and the international community. The process of right to development being written into international documents on human rights shows that this right is to be gradually acknowledged by more and more countries, which are main parts of the international community. Undoubtedly, the acknowledgement of the right to development is an effective measure adopted by countries and the international community as the basic premise or guarantee of the realization of right to development.

2. Objective Conditions

The objective conditions of the right to development mainly include:

(1) National political protection and economic development. They are important guarantee conditions to implement the right to development at the national level. Many facts have proved that the right to development cannot be implemented in a county that undergoes political unrest and backward economy.

(2) Peaceful and safe international environment, which provide necessary objective conditions for the realization of right to development at international level or macro level. Article 7 of *Declaration on the Right to Development* pointed out that "All States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries." In addition, General Assembly of UN restated in No. 37/199 Resolution in 1982 that "international peace and security are essential elements for the full realization of human rights, including the right to development."

What to be mentioned here is that nowadays, when we talk about "security," traditional security factors and non-traditional security factors should be taken into consideration, because they will exert effects on the realization of right to development inevitably.

(3) International cooperation. Article 3 of *Declaration on the Right to Development* stressed that the realization of right to development needed cooperation of countries. This Article stated that "the realization of the right to development requires full respect for the principles of international law concerning friendly relations and co-operation among States in accordance with the *Charter of the United Nations*" (Paragraph 2); "States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfill their duties in such a manner as to

promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights" (Paragraph 3). Article 4 of the *Declaration* stated that international cooperation would help to provide appropriate means and facilities to foster developing countries' comprehensive development.

(4) A fair and reasonable new international economic order, which will enable developing countries to truly enjoy equal development chances. Thereupon, these countries can provide their people with conditions and protection of human rights, including the right to development.

III. Obstacles for the Realization of Right to Development after 2008's Economic Crisis

The global economic crisis broke out in 2008 and still has impacts on global economy, leaving obstacles on the objective conditions that are needed to realize the right to development, which will obstruct the full and effective realization of the right to development.

1. Main Reasons of Economic Crisis

If we just analyze it from surface, there are the following main reasons for the economic crisis.

(1) In August 2007, subprime mortgage crisis broke out in America, leading to the most severe financial crisis since the Great Depression in 1930s. Then, the financial crisis prevailed globally and the world has been still confronted with the most severe economic downturn since 1930s.

(2) The global financial crisis triggered global economic crisis to different degrees.

(3) Unreasonable economic structure. The unreasonable economic structure or the systematical and structural risk brought by the "unreasonableness" is related to the unrecovered economic crisis.

(4) Unstable international currency and financial system with US dollar as the center. It is probably the fundamental reason of economic crisis.

2. Obstacles of Economic Crisis on the Realization of Right to Development

Michael Spence, the recipient of the 2001 Nobel Prize in Economics, holds that global economy is declining like free falling. He pointed that from the perspective of current situation, the economy wouldn't gain quick growth and 2010 would be the harshest year.[1] Europe's existing sovereign debt crisis and the uncertainty of US's economy may demonstrate this point. Views from champions in political, commercial, scientific and technical and academic circles,

1. Data are retrieved from "Dialog" of CCTV in November 2009.

who attended the Annual Meeting of the New Champions 2010 in Tianjin, drew a conclusion that although the economy stops the sharp slowdown, its systematical and structural risks are there and the economic recovery is in difficulty.[1] It can be said that the slowdown of economic growth, or even economic recession, and the according shrink of financing for developing countries from international financial organizations will undoubtedly set back the realization of the right to development. To our comfort, this Annual Meeting demonstrates that the international community has reached a comprehensive consensus to promote the sustainable growth of economy, which is significant to the recovery of economy. Undoubtedly, it is to ultimately benefit the real and effective realization of right to development.

IV. Major Measures for Protecting the Realization of Right to Development under the Background of Economic Crisis

International covenants relevant to the right to development, such as *International Covenant on Economic, Social and Cultural Rights* and *International Covenant on Civil and Political Rights*, have stated measures to be taken by contracting parties, including legislative and other measures for implementing the stipulations of the rights acknowledged in these covenants. Many articles of *Declaration on the Right to Development* adopt expression like "steps should be taken," "all necessary measures" and so on to emphasize a state's principal responsibility for the realization of right to development. Article 10 of the Declaration pointed out that "steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels." Under the background of the current economic crisis, measures at the national and international levels should be taken to ensure the realization of right to development.

1. Effective Domestic and International Legal Protection Mechanism

(1) At the national level

As countries bearing the principal responsibility for protecting the realization of right to development, they should take legislative, judicial, administrative and other measures to promote the realization of right to development.

China has always acknowledged the right to development and implemented it at the national level, by making policies and formulating development outlines, etc. to ensure the realization of right to development. In addition, China has given approval to some covenants on human rights that are related to the right to development, such as *International Covenant*

1. Annual Meeting of the New Champions 2010 in Tianjin was held on September 13 to September 15. Champions in political, commercial, scientific and technical and academic circles from 88 countries and regions attended this meeting. Details and their views can be retrieved from www.people.com.cn, www.022net.com, www.finance.ifeng.cn, www.google.com.hk, etc.

on Economic, Social and Cultural Rights and so on. However, it is not enough to only give approval to covenants. At present, the major problems we face and have to solve in time are about applying international covenants in the internal law of China.

(2) At the international level

At the international level, measures in at least three aspects should be adopted to establish effective international legal mechanism to protect the realization of right to development. Firstly, the effectiveness of protection mechanism established by existing international treaties on human rights is to be strengthened, with the main factor of the mechanism being national reporting system. Secondly, international legal regulations with legal validity are to be formulated. The above part has mentioned that Declaration on the Right to Development has no legal validity. Because of the lack of international legal documents with special regulations on the right to development with legal validity, such as treaties, countries' responsibilities for the realization of right to development have been limited. Therefore, the promotion of the formulation of these special international legal documents on the right to development is indispensable to the protection of the realization of right to development. Thirdly, effective monitoring institutions are to be established to monitor that countries will take appropriate measures to fully realize the right to development.

2. Positive International Cooperation

In September, 2000, heads of state and government from 189 member states of the UN passed *United Nations Millennium Declaration* during the United Nations Millennium Summit. In this *Declaration*, Member States made a commitment that "we will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development." Although this *Declaration* has no legal validity, it shows member states' attitude toward the promotion and respect the right to development. In order to turn the common values in the *Millennium Declaration* into reality and overcome the challenges of development stated in it, *Millennium Development Goals* was formulated. *Millennium Development Goals* set 8 goals, which are to be reached before 2015, including: to eradicate extreme poverty and hunger; to achieve universal primary education; to promote gender equality and empower women; to reduce child mortality; to improve maternal health; to combat HIV/AIDS, malaria and other diseases; to ensure environmental sustainability and to integrate the principles of sustainable development into country policies and programs; to develop a Global Partnership for Development. *Millennium Development Goals* is "a blueprint jointly presented by all the countries and main development organizations in the world."[1] All of the 192 member states of UN have made a commitment that the 8 goals set in

1. Data are retrieved from http://www.un.org.

Millennium Development Goals should be realized before 2015. In addition, in 2005, United Nations Economic and Social Commission released a report on the right to development by UN High Commissioner for Human Rights. This report involved activities for the realization of right to development launched by Office of the UN High Commissioner for Human Rights as well as the implementation of the resolutions of right to development of Human Rights Commission and UN General Assembly. Meanwhile, just like the aforesaid Declaration and Goals, this report also focused on the promotion of the cooperation on development between international organizations. Against the background of the economic crisis, this kind of cooperation can facilitate the realization of right to development, which is much necessary and significant.

3. The Establishment of New International Economic Order

The main feature of the new international economic order that was proposed between 1970s and 1980s lies in its close relationship with economic self-determination. In the past, newly independent countries, liberated from colonies, realized the importance of economic self-determination after they got political self-determination; so they proposed to establish a new international economic order to realize their economic self-determination.

Against the background of the current economic crisis, the intension and extension of the establishment of new international economic order should be expanded in case of potential crisis in the future. That is to say, the contents or goals of the new international economic order should at least include: (1) to establish reasonable economic structure; (2) to promote scientific and technical innovation and sustainable growth; (3) to establish stable currency system; (4) to discard the risks of protectionism; (5) to promote multi-organization and multi-level cooperation. These can truly help to realize the fair development between countries and so on. Thereupon, the realization of the right to development can be fully and truly realized and protected.

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Sustainable Development and Human Rights

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I. Universal Human Rights in Perspective:

The universal system of human rights is an ever-growing web of treaties, conventions and covenants adopted by a large majority of States in the major multilateral forums, first among them the United Nations. At the base is the *Universal Declaration of Human Rights* as adopted by the United Nations General Assembly in 1948. This Declaration spells out a set of basic human rights and fundamental freedoms, universally recognised and universally applicable, and also introduces certain basic economic, social and cultural rights, including the right to an adequate standard of living and the right to health, the right to education, the right to work, the rights of disadvantaged groups within society, women, and children in particular. Together with the two *International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights*, both adopted in 1966 and entered into force since in 1976, these form the "*International Bill of Rights*," the centre part of international human rights law.

Over the years, a number of additional, multilateral treaties and conventions have been added, mostly under United Nations auspices. They target the protection of the human rights of vulnerable groups such as children, women, refugees, prisoners and detainees, minorities, migrants and workers. Outstanding among these conventions are: the *International Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW); the *International Convention on the Rights of the Child* (CRC); the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD); and the *International Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT). Mention should be made also of the important body of international labour laws and labour standards adopted by the International Labour Organisation (ILO).

The above instruments form the core of the normative framework within which the universal system of human rights is to operate. They have been elaborated and ratified by a large majority of Member States of the United Nations and as such they are legally binding under international law and impose specific duties and obligations on those States who have become parties to these multilateral instruments. They all spell out the basic, inalienable human rights of individuals, groups and communities whom States have the obligation to

protect and promote, be these rights, civil and political or economic, social and cultural in nature. In other words, States, in ratifying these conventions, have assumed the universal protection and promotion of human rights are to be considered a complementary part of the normative framework for sustainable human development, and as such, are part of the universal system of human rights.

II. Evolving Concepts of Sustainable Development:

The interrelated and interdependent trilogy among peace and security, development and human rights was and remains the conceptual underpinning and basic mandate of the United Nations. In practice, this practice has yet been evident over the years. During the long period of the Cold War, these three basic pillars of the United Nations architecture grew and evolved quite separately from one another without much interaction among them.

The situation, however, has significantly changed over the last two decades. The first signpost of change came about with the adoption by the United Nations General Assembly of the *Declaration on the Right to Development* which explicitly affirmed the human right to development. This proclamation was strengthened by the 1993 Vienna World Conference on Human Rights as well as by the various world conferences and summits which took place under United Nations auspices during the 1990s, bringing basic human rights to the fore, and culminating with the *Millennium Declaration* and the *Millennium Development Goals* (MDGs), based on an integrated and interdependent set of human rights, identified as the underpinning of the process of economic and social development. In parallel, there was a redefinition of the process of development itself, a shift away from the purely economic approach to development, towards development defined as human development, as a comprehensive, people-centered economic, social, cultural and political process through which all the human rights and fundamental freedoms of all individuals and entire populations can be protected and promoted. Added to this came the concept of sustainability, first formulated by the World Commission on Environment and Development, the *Brundtland Report*, defining the concept of sustainability as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." The "Earth Summit" in Rio (1992) further reaffirmed and defined the principle of sustainability in its final declaration and set a specific agenda (Agenda 21) for its implementation.

As the new millennium dawns, human mankind continues to be confronted with a wide range of challenges. While poverty eradication, changing consumption and production patterns and protecting and managing the natural resource base for economic and social development remain overarching objectives of and essential requirements for sustainable development, 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, security and stability. The global environment continues to suffer. Loss of biodiversity continues, fish stocks continue to be depleted, desertification claims more and more fertile land, the adverse effects of climate change are already evident, natural disasters are more frequent and more devastating, and developing countries more vulnerable, and air, water and marine pollution continue to rob millions of a decent life. In the context of globalization, the rapid integration of markets, mobility of capital and significant increases in investment flows around the world have opened new opportunities for the pursuit of sustainable development, but the benefits and costs are unevenly distributed, with developing countries facing special difficulties.

Against such a backdrop, it has been widely acknowledged that sustainable development should acquire broader meaning and ensure the well-being of the human person by integrating social development, economic development, and environmental conservation and protection. Active participation in sustainable development ensures that those who are affected by the changes are the ones determining the changes. The result is the enjoyment and sharing of the benefits and products generated by the change. Participation is not exclusive, ensuring equitable input, self-determination and empowerment of both genders and all races and cultural groups. It is essential, when looking at sustainable development from a rights perspective to first acknowledge that in order for a person or society to continue advancing, the basic needs of every individual must be met. Basic rights must be respected and realized so that every person has equal access to resources, including the rights to an adequate standard of living and the continuous improvement of living conditions; the highest level of physical and mental health; adequate food and nutrition; clean water; sanitation; health care; education; adequate work and appropriate working environment. More than ever before, there is a pressing need for the United Nations, Member States and other relevant stakeholders to unite efforts in promoting sustainable development and human rights in a balanced and harmonious manner, bearing in mind that lasting progress requires effective development policies at the national level as well as equitable economic relations and a favourable economic environment at the international level, and also with due respect for national sovereignty and territorial integrity, non-interference in the internal affairs of States, impartiality, non-selectivity and transparency.

III. Sustainable Development and Human Rights in Vietnam:

With 64 provinces and cities, Viet Nam covers an area of 331,216.6 sq km spreading from latitude 23°23’ North to 8°27’ North. The country is located on the Indochinese peninsula in Southeast Asia and has a large number of islands and archipelagos. Its geographical length and the diversity of its regions have created not only the country’s uniqueness and cultural richness, but also challenges to the protection and implementation of

human rights and the promotion of sustainable development.

Having undergone 30 years of wars, Viet Nam embarked on nation building and development in face of high rate of poverty, a shattered economy and inadequate infrastructure, while having to deal with the aftermaths of war (e.g. victims of Agent Orange, unexploded landmines and bombs). Thanks to its reform policy, known as Doi Moi, launched in 1986, Viet Nam has reached a turning point in economic growth, thus creating a momentum for the country's development and significantly improving the material and spiritual well-being of the people. The development of a market economy and the opening-up of the country also had adverse impacts, notably the rich-poor gap, urban–rural disparity and the low level of integration of vulnerable groups such as women, children, ethnic minorities and people with disabilities. These are challenges to Viet Nam in its efforts to strike a balance between increasing economic growth and ensuring social security and the people's full enjoyment of fundamental rights.

Throughout the history of struggles for national independence and freedom, the people of Viet Nam have always treasured the sacred values of human rights, notably the right to self-determination, the freedom to decide one's own fate and the right to live in dignity. The first Constitution in 1946, which gave birth to the Democratic Republic of Viet Nam, the now Socialist Republic of Viet Nam had all these rights inscribed. As they evolved to meet the new requirements for national development, the Constitutions of 1959, 1980 and especially 1992 (as amended in 2001) have not only fully recognized and guaranteed human rights and the rights of citizens in compliance with international law, but also clearly affirmed that Viet Nam is a rule-of-law State of the people, by the people and for the people, and is responsible for ensuring and promoting the mastership of the people in all areas.

For Viet Nam, the people are both the ultimate objective and driving force of any social and economic development policy, and protecting and promoting human rights are always the Government's consistent policy. The 1992 Constitution, the supreme law of the country, guarantees that all citizens enjoy equal political, economic, cultural and social rights, and are equal before the law. Every citizen has the right to participate in the management of the State and the society, the freedoms of religion and belief, the right to free movement and residence in the territory of Viet Nam, the right to complaints and petitions, the right to employment, education and healthcare etc. regardless of gender, race and religion. On that basis, Vietnamese laws enumerate the specific rights in accordance with international human rights standards. Through practice, Viet Nam has come to understand that human rights are closely associated with independence, peace, democracy and development. The maintenance of a peaceful and stable environment since national reunification in 1975 has been a major success and laid a firm foundation for the protection and implementation of human rights in Viet Nam. In the course of Doi moi, Viet Nam has focused on macro-adjustments and socio-

economic development programmes in order to sustain growth, better guarantee the material and spiritual well-being of the people. These achievements have created the premises for the implementation of human rights in all fields.

Viet Nam is a party to almost all core international human rights treaties, including the *International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Racial Discrimination* and *the Convention on the Elimination of All Forms of Discrimination against Women*. Viet Nam is the second country in the world and the first in Asia to sign the *Convention on the Rights of the Child*. The country has also ratified 17 conventions of the International Labour Organisation. Viet Nam signed the *Convention on the Rights of Persons with Disabilities* on 22 October 2007 and is seriously considering signing the *Convention against Torture*. Domestic legal documents are promulgated or amended to incorporate Viet Nam's obligations under international treaties to which it is a party and not to hinder their implementation (Articles 3 and 82 of the 2008 *Law on the Promulgation of Legal Normative Documents*).

Viet Nam's development policies have always combined economic growth and cultural and comprehensive human development as well as the promotion of democracy, social progress and justice. Therefore, the economy has enjoyed a high and sustained growth rate for many years, averaging over 7.5% per year; Viet Nam's Human Development Index (HDI) and Gender-related Development Index (GDI) rankings have been increasingly improved. Currently, Viet Nam ranks 64/127 countries in the UNESCO's list of education development. Although being a developing country with GDP per capita of US$ 1,000, Viet Nam still spends 15% of the national budget on public health and education services. Maintaining social and political stability, economic development in conjunction with social security is a condition for sustainable human development in Viet Nam.

However, a number of challenges still remain. The system of legislation on natural resources management has been enacted but not all of them are equally effective and consistent, and they are slow to be implemented. Spontaneous mineral resources exploitation also causes pollution and affects the scenery. The industrialization process has caused environmental pollution, especially in regard to industries, transportation and aqua-product processing. The rapid urbanization process has exerted a lot of pressure on the environment, causing reduction of green coverage and water surface. Biodiversity is now facing with degradation risk due to unplanned transformation of land use purposes, unorganized utilization and exploitation of natural resources, natural calamities, droughts and fires… Institutional systems for sustainable development are newly established and still incomplete. There has not been the harmonization between the growth objective and environmental protection, which affected the sustainable development.

In order to ensure close and harmonious linkage between economic, social and environmental aspects in the course of industrialization and modernization of the country, Viet Nam has enacted the *Vietnam Strategic Sustainable Development Orientation* (Agenda 21), which aims at, inter alia, a rapid, stable and sustainable economic growth, a reasonable management and exploitation, economical and effective use of natural resources towards an environment-friendly life, sustainable development, preservation of a clean-and-green environment and biodiversity. Attention has been also paid to institutions needed for mainstreaming environmental issues into socio-economic development strategy, developing and implementing sustainable development plans in the entire country and territories. Some major solutions are listed as below:

Firstly, to enhance education and communication for the whole society to be aware of and responsible for environmental protection, seeing this as the whole society's responsibility. Emphasis is to be given to training staff for provincial, city, district, commune and ward levels, providing them with new knowledge of environmental protection at local levels.

Secondly, to maintain regular baseline survey activities so as to collect and process data on the natural conditions and resources for better understanding of the current situation and changes of natural resources. These surveys have generated a good number of reports in which environmental data are collected, analyzed and stored; environmental pollution by industrial waste and domestic waste is investigated, and fundamental elements directly or indirectly related to the quality of the soil, water, air environment, or river and marine ecological systems, etc., are studied.

Thirdly, more attention should be paid to meteorological and hydrological sector with some modernization. Measurement and adjustment have been conducted to improve the system of geographic position, altitude, astronomic observation, gravity on land. Administrative and land use mapping is conducted for agricultural, forestry, planning.

Fourthly, to reasonably exploit, preserve and economically and effectively utilize the natural resources (soil, water, minerals and environment…) to meet the demand of economic growth, poverty reduction and sustainable development.

Fifthly, to strengthen international cooperation, actively participate in international and regional environmental activities, fulfill international commitments, especially those with regional countries on management, control and treatment of environmental pollution.

Finally, to improve the prevention capacity and mitigate averse effects of natural disasters and negative climate changes on the environment; provide effective support and resolution of environmental incidence caused by natural disasters; manage exploitation and utilization of natural resources, especially soil, water, forests and scarce minerals; ensure a high level of eco-balance; preserve the nature and biodiversity.

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IV. Conclusion:

The relation between sustainable development and human rights has a long story, both in concept and in practice. Against the background of fast and in-depth changes brought about by globalization, given the multiple inter-related and mutually reinforcing current global crises, Member States and the international community at large should spare no efforts to achieve sustainable development and human rights for all, in a coordinated, coherent and holistic approach and on the basis of the United Nations Charter and the fundamental principles of international law. The right to development of each and every nation and individual is all-encompassing, demanding the realization of all human rights, whether civil, cultural, economic, political or social. It is therefore crucial and irrevocable to promote people's well-being based on their active participation in the life of society and in the fair distribution of benefits resulting from it.

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Human Rights and the Millennium Development Goals

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USA

Ten years ago, in September 2000, leaders of 189 countries of the world gathered in New York to sign the Millennium Declaration pledging to end extreme poverty, hunger and disease in the world. They also committed their governments to achieving the Millennium Development Goals of halving extreme poverty and hunger, achieving universal primary education, promoting gender equality, reducing child mortality, improving maternal health, combating HIV/AIDS and malaria, ensuring environmental sustainability, and building a global partnership for development.

The MDGs provided, for the first time, a comprehensive common, concrete and measurable framework for achieving these development goals by a specific date, the year 2015. Although all countries committed themselves to the achievement of the MDGs, it was of course understood that the developing countries have to work to realize them, the developed countries committing themselves to providing assistance and partnerships as specified in Goal 8. Unfortunately, many of the commitments of increased donor assistance by the developed countries have gone unfulfilled or underachieved, such as the G8 Aid to Africa commitments in 2005 at Gleneagles and the G8 L'Aquila Food Security Initiative in 2009.

The MDGs do not provide a concrete policy or planning framework, but have to be integrated in the national planning frameworks and each country's political decision to achieve its own long term goals. Therefore the MDGs mainly provide a unified framework to measure the progress in the different countries and compare the results between countries, rather than prescribe specific policies.

Ten years have passed since the adoption of the Millennium Declaration and only five years are left to achieve the lofty Millennium Development Goals by the target date of 2015. When the world leaders met again in New York last month to examine the progress, UN Secretary General Ban Ki-Moon reported that the prospect of many countries falling short of achieving the goals by the target date is very real. In the Secretary General's words, "this would be an unacceptable failure, moral and practical." "If we fail, the dangers in the world – instability, violence, epidemic diseases, environmental degradation, runaway population growth – will all be multiplied." he said.

According to his report, there were still 1.4 billion people living in extreme poverty in

2005, down from 1.8 billion in 1990. However, as some three quarters of this reduction was achieved by China, the number of people living in extreme poverty in the rest of the world has actually gone up by about 36 million between 1990 and 2005. The food and oil crises in 2007-2008 and the global financial and economic crisis of 2008-2009 have made the overall situation still worse, pushing another 100 million people deeper into poverty.

The Secretary General's report also identifies a number of new challenges, such as climate change, natural disasters and humanitarian crises that will have to be tackled by the international community in order to overcome world poverty.

Where successes have been achieved, a number of key success factors were identified, such as effective government leadership, effective policies to support implementation, improved quality, quantity and focus of investment, and appropriate institutional capacities to deliver services at national scale.

The link between the MDGs and Human Rights has also been highlighted.

In difference to the MDGs, human rights do not have specific measurements or targets. Human rights are aspirational, meaning that they represent ideals towards which steady progress has to be made. In that sense, the realization of human rights can be seen as a constant process of improvement in all countries. Full human rights are not an end point or condition that has been achieved by some countries and some not.

What links the Millennium Development Goals to Human Rights is the Right to Development, as implied in the United Nations Charter and the Universal Declaration of Human Rights, and further specified in the International Human Rights Covenants.

Through the United Nations Charter, the Member States undertook to "promote social progress and better standards of life in larger freedom" and to "achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction of race, sex, language or religion."

At the International Conference on Human Rights of 1968 held in Teheran, Iran, it was proclaimed that "the enjoyment of economic and social rights is inherently linked with any meaningful and profound interconnection between the realization of human rights and economic development."

Indeed, the right to a dignified life free of hunger is at the core of any human rights. The UN Declaration on the Right to Development defines such right as "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 human freedoms can fully be realized." Still today, the realization of the most basic human right of a dignified life free of hunger, with access to education, health care and other basic social services is but a distant dream for millions of people living in

extreme poverty in the developing world, as well as for many poor and excluded people in developed countries. Vulnerability, discrimination and social exclusion and gender disparities still persist in many advanced countries.

Thus human rights and development policies are mutually reinforcing strategies to achieve the same objective: constantly improving the overall human wellbeing and quality of life.

The overall aim of the Millennium Development Goals is to halve extreme poverty by year 2015. There are eight goals and 18 specific targets, together with 48 technical indicators, through which progress towards fulfillment of the goals is measured. Each of these goals and targets can be linked to different rights spelt out in the United Nations human rights agreements, such as the right to adequate standard of living, right to food, right to education, right to health, right to work and right to adequate housing.

By the mid point, some seven years ahead of schedule, China was the first country to achieve the overall goal of halving poverty.

China has successfully integrated the MDGs into its national 5-year plans and adopted concrete policies and programs, coupled with adequate financial resources and strong political commitment to achieving its development goals.

According to China's 2010 progress report, MDG targets that have been fully achieved or surpassed ahead of time include eradication of poverty, hunger and illiteracy, and reduction in the mortality rate of infants and children under the age of five. China is also on track to reduce maternal mortality ratio, and to be able to control and treat AIDS and tuberculosis. China will no doubt meet all of the MDG targets by or before 2015.

China's Human Development Indicator has also risen rapidly. Between 1980 and 2007 China's HDI rose by 1.37% annually from 0.533 to 0.772, giving it the rank of 92nd out of 182 countries, exactly in the mid point of all measured countries, and fast approaching the Latin American and Eastern European middle income countries. China is clearly ahead of other countries in its peer group in areas such as life expectancy and adult literacy.

On the basis of its past successes, experience and the financial and human resources that it has accumulated during its rapid development, China is poised to move its social development ahead even more rapidly, beyond the original MDG targets and towards more ambitious goals. It is foreseen that China will soon qualify as a middle-income country.

Since economic growth is the material base for achieving the MDGs, China has continued to carry forward its structural reforms, focusing especially on strengthening the role of agriculture by improving productivity and rural infrastructure; on strengthening the capacity for innovation and competitiveness in industry; and speeding up the development of the service sector.

China is, however, also facing new challenges. The amazing economic growth achieved in the past three decades has created a widening gap between urban and rural populations,

as well as between the eastern, central and western regions. Reducing these gaps will undoubtedly require further firm action refining and implementing policies to spread the benefits of economic development among different regions and people for more balanced economic and social progress.

On the other hand, maintaining environmental sustainability is seen as a key part of the MDGs. As specified in China's 2010 Progress Report on the MDGs, with such strong economic growth, China needs development strategies for energy conservation and environmental protection, and must work towards realizing fundamental changes in its modes of economic development. China's long-term target is to establish a resource-saving and environmentally-friendly society.

Fostering inclusive growth during the next five year plan is seen as an important means to ensure equal access to opportunities, such as employment, education and health care, and to balance economic and social development with environmental protection.

China's development experience and its support to other developing countries have made a significant contribution to international efforts to meet these development goals and targets. Since the year 2000, China has carried out over 1,000 projects in more than 120 countries within the South-South cooperation framework, including providing assistance through grants, interest-free loans, and preferential loans. China has assisted other developing countries to develop their agricultural sectors to increase grain output and alleviate poverty. China, although itself still a developing country, is now the world's third largest provider of food assistance to other poor countries, behind only the United States and the European Union.

China also helps other developing countries to improve their educational systems, as well as to improve their medical and sanitary conditions and diagnostic expertise, fight malaria and other diseases and lower child mortality rates. Since 2006, China has helped African countries to build 30 hospitals and 30 centers for malaria prevention and control.

In 2009, China signed contracts with African countries worth over US$43 billion for new construction projects of highways, ports and other economic and social infrastructure of fundamental importance to those countries' ability to overcome poverty. At the end of 2009, China's accumulated direct investment in Africa came to US$9.33 billion.

Additionally, China has forgiven 380 interest-free loans owed by 50 of the least-developed and other poor countries burdened by heavy debts.

Examining through the lens of its achievement of the Millennium Development Goals, we can conclude that China has made solid progress in advancing the human rights of its large population. It has also made important contributions to the wellbeing of numerous people in other developing countries.

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Asian Contribution to the Issue

Romeo Orlandi
Italy

Osservatorio Asia (Asia Observer in English) is a think-tank based in Italy, a non-profit organization trying to disseminate the opportunities arising from Asia to economic circles. Our motto is "knowledge is a business factor."

The relationship between human rights and economic development has been long debated. So, I am not going to review the main positions of the dispute. In my speech I will try to illustrate one single opinion: economic achievements in East Asia have transformed the link from a necessity into a possibility. The matter is old: are human rights preliminary or concurrent to the economic growth? The answer after WWII was relatively unanimous: the two topics are not distinct, economic development cannot avoid human rights issues. Personal freedom at large cannot be limited or seen as a rigid legal obligation. It has been valued – and still is in many aspects – as precursor of material improvement. To give strength to this position, theorists go back to 1690 when philosopher John Locke stated that man possesses an inalienable right to life, liberty and property. If human rights are respected, the correlation with individual and social prosperity is more probable, if not automatic. Fulfilment of human aspirations ensure productivity, while when people are denied their rights, the social mechanism is stagnant, non creative, and less dynamic. According to this view, violations of basic rights might lead to social instability and other conflicts. In conclusion: to violate individual rights is a mistake, both ethically and economically.

Recent history proved this vision had strong fundaments, a coherent theory, and an internal logic. Experiences of different countries proved the view was right. Few countries gathered freedom from colonialism and gained economic achievements. Many others did not qualify as democratic, did not respect human rights and "as a consequence" registered small or non-existing prosperity. This happened mainly in Africa for young countries, but also Latin America witnessed open violations that did not allow any significant growth. The most pregnant case to sustain the theory of liberalism certainly took place in Europe. The Eastern section of the Old Continent was disrespectful of human rights and unable to produce sufficient wealth for their populations. The historical contingency that leads to the creation of "popular democracies" was insufficient to explain why, after decades of rule, citizens were neither free nor fully prosperous. General perception duplicated the liberal approach:

only freedom can assure results. It was common to equate dictatorship with shortage. There was a good amount of propaganda in the assumption, but it is undeniable that the collapse of Soviet Union gave fuel to the theory of supremacy or even uniqueness of liberalism. Those were the roots of WTO (World Trade Organization), based on principles of freedom, respect, democracy, development. Every obstacle to mobility and freedom harms general welfare.

This vision seemed uncontested until when some experiences from Asian countries proved other paths to prosperity are possible. They do not contradict general wisdom, but offer different solutions. New approaches do not deny the universal value of democracy or criticize the importance of human rights. They simply redefine "human rights," provide different timeset for implementation of democracy, give a more distinct value to development. What looks as a simple accuracy of names and concepts, in reality is a revolution. Take the case of South Korea, the most important of the so called Asian Tigers. It is well known that the country turned itself into an economic powerhouse in few decades, after the backwardness of its disastrous situation due to the Japanese occupation and the civil war. Now the per capita income of the republic of Korea is 28.000 $ (source: IMF, 2009), one of the highest in Asia. It also proves the effectiveness of the political economy undertaken to eradicate poverty and create wealth for all its citizens. Today South Korea is a medium-high rich country and a democracy where human rights are widely respected, at least by the international standards. The country was a military dictatorship which progressively transformed itself in a free country. Somebody might recall the role played by the Olympic Games in Seoul in 1988 which introduced a new country to the world. What is essential in analyzing South Korea is that economic development and human rights were not concomitant, the latter being trailed by the former. Freedom and democracy were not indispensable to the growth but a consequence of it. Income, both national and personal, was achieved still under totalitarianism, even if with turbulence and social unrest. Class struggle and bigger GDP lead to mass demonstrations and social activism which eventually turned to parliamentarism. Respect of human rights was a noble aspiration, achieved through mundane methods. It is critical to acknowledge that the rigidity of the equation was elasticized to become a consequence. To liberate hearts and mind you have to fill the stomachs; to have freedom of press, you have to alleviate poverty and defeat illiteracy. In conclusion: it is true that development and human rights are linked, but they might have a strong or loose affiliation.

Singapore, another successful Tiger, played a similar role. The country has achieved a remarkable development and then its rigidity was reconsidered, even if not in full. Some critics refuse to recognize the city-state as a champion of human rights protection, even if the country holds free elections and basic liberties are guaranteed. The situation was different few decades ago, when the country needed stabilization in order to take off. At that time law

and order were put in place regardless of the consequences. During the period of turmoil, it was usual to judge the human rights as an obstacle to development. For many years they were treated as a liability, rather than an asset. Then, with the peaceful progress and the reduction of poverty, a more lenient approach prevailed. It is known that Singapore and its neighbour Malaysia tried to reshape the concept of human rights. They introduce on a political level the notion of Asian values which the Governments are supposed to respect. These values are not antagonistic to human rights, but refer exclusively to Asian conditions which, in this view, should prevail in case of difference. It represents a way to defuse criticism to poor records of freedom of expression or alleged violations of environment, at the same time gives the possibility to prioritize the human rights. Personal security is as important as political freedom? Police force is seen as a détente or as a repression? For a resource-rich country, tree cutting and log selling is a crime or a necessity to feed its people? When does the difference start? When a country is guilty? Asian values approach was an answer, certainly debatable and filled with self-acquittal. Nevertheless it provided an enrichment of the concept. Human rights, in a widespread belief, are no longer exclusively identified with personal freedoms, but also associated with security, safety, respect, harmony, protection for the elderly and the less fortunate.

These contributions to the human rights protection could not been possible without the strength of economic success of Asia. Growth of GDP underpinned these positions, partially heretical with the conventional view. China is the most significant example, even though other big countries like Indonesia and Vietnam gave important experiences. China has the stature to give full support to a redefinition of human rights or maybe of their authentic interpretation. Take aside the political dispute and stick to the assumptions. Right to live is the basic one. It is immediately linked to the economic development. Better conditions of living are essential. No wonder, this is the position of a developing country. Rich countries do not face these kinds of problems. Rightly, their approach is more articulated. Stability is the key word to guarantee development. Just to quote President Hu Jintao: *"We must be clearly aware that development is of overriding importance and stability is our overriding task. If there is no stability, then nothing can be achieved, and the achievements we have made will be lost."* China does not deny the value of human rights and the concept of democracy. Nevertheless, to connect them to stability introduces another crucial factor: time. If the social environment is considered not mature enough, human rights safeguard can be postponed. According to the Chinese position, parliament election can be delayed and "true" human rights, like education, material progress, access to consumption, health protection, are privileged. There is no deadline set for formal democracy, that's why time is of essence. By doing this, China set free hands for commitment and can continue to grow, up to a point when introduction of different models will become both a choice and a necessity. At that

time any pressure will cease. So far, the sustainability of the Chinese approach proved to be resilient. Continuity has been defeating two main forecasts: 1) China will no longer grow without political reform; 2) Economic success will eventually lead to a different system. Beijing proved differently, stating that a developing country must respect its own priorities.

But now China is no longer a poor country, due to the gigantic success of the last 30 years. So, the question is immediate: is China mature for a more universal acknowledged handling of human rights? Can China follow the same path, even on a bigger scale, of South Korea and Singapore? To be more productive a debate should take into consideration the other side of the coin: a ranking of human rights is possible? To declare them inalienable and universal is correct, but is it also conducive? Asian values, stability, timing can be added to John Locke's theory? So, if the definition of human rights is widely accepted, its application diverges. Finally, my conclusion is that human rights are neither automatically linked nor fully distinct from development. Their connection is neither an obligation nor an accident. To avoid fruitless disputes, it's appropriate to acknowledge that development is human right, in its widest meaning: economic, social, cultural, and political.

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Human Rights and Development: Conception, Mode and Reflections on Approaches

Aleksandr Nikolaevich Yushkevich
The Republic of Belarus

The Human Rights Forum held in China keeps abreast with high level of international standards, demonstrating that China has made breakthroughs in protecting and advocating human rights and freedoms.

Since July 21, 1990 when the *Declaration of State Sovereignty of the Belarusian Soviet Socialist Republic* was adopted, Belarus has chosen a development road of an independent state under the rule of law, forming by that time the major characters of a democracy – people's regime and political pluralism, while at the same time principles of decentralization are playing an effective role.

As is well known, it is the main function for a state subject to the rule of law to protect individuals and citizens' fundamental rights and freedoms.

The Republic of Belarus protects its people's rights and freedoms in accordance with internationally accepted norms. Besides, from the historical perspective, as one of the founding member states, the Republic of Belarus has been standing with other countries since the formation of international human rights system. Belarus has participated in drafting most of the international human rights instruments, including many important and comprehensive international human rights documents, e.g. *Universal Declaration of Human Rights*, *International Covenant on Civil and Political Rights*, *International Covenant on Economic, Social and Cultural Rights*.

Belarus firmly endorses such fundamental values as freedom, equality, wealth and dignity of citizens, social insurance, and respect for the cultural characteristics of all ethnic groups.

I believe that protecting and safeguarding human rights should be based on political, social, religious and cultural values of each and every country, and respect for these values will provide good conditions for human rights dialogues with equality and mutual-respect.

Belarus has established consistent policies aimed at free development of cultural, linguistic and religious diversity, which constitute an important element for stability among different ethnicities.

Today, the Republic of Belarus has become a "cozy island" in the sea of international

and regional disputes.

Belarus has not seen ethnic, racial, cultural and linguistic contradictions or conflicts in its history, and people from over 130 ethnicities inhabit the territories of Belarus.

In Belarus, there are 123 social organizations, in which 24 ethnic cultural groups have representatives.

Belarus has always been providing financial support to cultural agencies set up by ethnic public groups as well as various cultural and educational campaigns sponsored by them.

Belarus' education institutions organize students to learn languages of ethnic minorities, safeguarding the students' right to use native languages of their own. The teaching syllabus has included courses on histories and cultures of ethnic minorities. Some schools have been teaching Polish and Lithuanian.

With regards to supporting ethnic minorities, in order to make policy recommendations to the government, Belarus has established the Ethnic Advisory Committee, whose membership includes representatives from more than 20 ethnicities within Belarus.

Belarusian laws allow citizens to fully exercise their freedom of belief and protect normal activities of religious organizations. All religious beliefs are equal before the law.

The number of Belarusian religious organizations is growing.

The registered religious organizations are exempt from profit, land and real-estate taxes, including the tax of building religious sites. In Belarus there are more than 2,000 finished religious sites and about 250 ones under construction. The government gives assistance to religious groups in renovating religious sites and other things representing historical and cultural values.

From Belarus' perspective, the activities of religious groups have made substantial contribution to safeguard domestic stability and social harmony and enhance citizens' moral standards.

Belarus welcomes the recommendation put forward by religious groups to support and safeguard dialogues based on respect for human rights among different religions. With the government's support, Belarus regularly holds international conferences advocating constructive dialogues among people with different religious beliefs. In 2009, the "International Dialogue between Christianity and Judaism: Religious Values as a Foundation for Respecting Civil Society" was held in Minsk and President A.G. Lukashenko participated in this event.

Belarus has made multi-aspect proposals and recommendations to the United Nations on dialogues and cooperation among different religions and cultures aimed at peace. In 2009, Belarus became one of the participating states for the international forum of the authoritative UN Alliance of Civilizations.

In the current condition where extremism is increasingly severe, I have to mention a

disastrous problem that all the countries are facing, i.e. the contemporary slave trade.

As a member state of all the international organizations against slavery and slave trades in modern forms, Belarus directs its national policies towards combating human trafficking.

The Republic of Belarus actively participates in and commits itself to developing comprehensive mechanisms combating against contemporary slave trade.

Since 2002, Belarus has been implementing a full set of national program against human trafficking. During this period, we have joined with the Interpol and other special international organizations to destroy 18 criminal organizations, including 15 international criminal organizations as well as 64 organized criminal groups. 1,362 persons were prosecuted for their criminal liability, among them 501 being sentenced to life imprisonment. About 3,600 trafficked persons were rescued.

Together with some international organizations (International Organization for Migration and UN High Commission for Refugees) and social organizations, we have established an agency to help trafficked persons conduct psychological recovery. We have strengthened the following legislative measures to provide free aids to trafficked persons: to provide temporary habitats for them, including free accommodation and food and drink; to provide legal assistance, including free lawyer service; to provide medical and psychological assistance; to find their homes for the direct victims of human trafficking, or to arrange them to settle down in other households, or to arrange trafficked children to settle down in children's residential institutions; to help trafficked persons find stable jobs.

Currently, there are altogether 140 social adaptation and rehabilitation agencies and 17 emergency stations to provide social and psychological recovery services for victims of various kinds of violence, including human trafficking. With the support from international organizations (International Organization for Migration) and non-government organizations (La Strada), we have set up 4 specialized rehabilitation agencies, and 15 non-government organizations also provide victims of human trafficking assistance for their returning to society.

In 2007, Belarus established the Research Center on International Migration and Anti-Human Trafficking with an attempt to help the International Organization for Migration. In 2008, the Center became the basic education agency for CIS member states. It provides periodic trainings for representatives from law enforcement agencies of CIS member states and holds many international campaigns themed with human rights protection.

Belarus is well known to be a world's leading country in terms of opposing contemporary slavery. In the 2005 UN Millennium Conference, Belarus made the proposal that the international community should strengthen its fight against human trafficking and build global cooperation for combating slavery and human trafficking in the 21st century. After that, the UN adopted three resolutions in accordance with Belarus' proposal to

strengthen the coordination and effectiveness of fighting against human trafficking by the international community.

According to Belarus' proposal, the global action plan to fight against human trafficking is now under formulation, which is aimed to coordinate to fully solve the problem of contemporary slave trafficking. This idea has gained high appraisal and active support from all the countries, international organizations and the UN Assembly.

Like all the other countries, China agrees with Belarus's relevant suggestions in the international arena, which is of great importance to us.

For example, in November 2009, China expressed its support to Belarus' sponsored resolution "Improving the coordination of efforts against trafficking in persons."

Unfortunately, the problem of slave trade is often due to the poor legal consciousness and literacy of the victimized citizens. Therefore, what I'm going to mention is rather important, that the development of human rights education system is indispensable for the progress and achievement of human rights. Any democratic society cannot be made up of citizens lacking of awareness of laws, powers, people's obligations and the laws the countries use to coordinate social relations.

In order to reach this goal, the Republic of Belarus has rendered human rights education universally compulsory, and human rights education has now become part and parcel of the school's teaching courses.

In Belarus, a complete system of human rights education has been formed in common education institutions, which regularly hold human rights education activities.

We ensure our citizens to be in extensive touch with UN's relevant fundamental human rights instruments.

According to *Basic Law of National Youth Policy* adopted in 2009, we will establish some special agencies across the country to provide consultant services on human rights issues and legal assistance for young people.

"The education plans and syllabuses for children and studying young people" are now under implementation, according to which, children and adolescents of all grades must study the rights of the child, human rights and international humanitarian rights.

Since 1995, all the high schools in Belarus have offered the special course of Children's Rights. In particular, we have established a website to protect children's rights (www.mir.pravo.by).

The National Development Program of Human Rights Education has been implemented, and according to this Program we have set up an extensive and multi-level education system of human rights and children's rights protection and published relevant guiding literature and documents on teaching methods.

The purpose of any democratic state carrying out human rights education is to lead their

citizens to the humanitarian world view, sense of dignity and responsibility, self-respect and the in-depth realization of their rights and obligations.

In conclusion, I would like to point out that Belarus has already established legal, political and economic protection mechanisms, so as to realize people's fundamental democratic rights and freedoms in a more effective manner.

Although the global financial crisis has rendered our economy in complicated situations, protecting people's social and economic rights is still a priority of Belarusian national policy.

We are looking forward to constructive cooperation with other countries. It is our belief that the experience Belarus has accumulated in human rights protection and safeguarding will be beneficial and useful to other countries.

We call upon all the states to actively carry out human rights cooperation on the basis of mutual respect and equality, and we reiterate that Belarus is willing to cooperate with other countries on this basis.

(The author is Chairman, Permanent Commission for Human Rights, Ethnic Relations and Mass Media of the House of Representatives of the National Assembly, Belarus.)

Human Rights and Development: Rethinking Concepts, Models and Approaches

Anders Kompass
UN

For the last two decades, tremendous efforts have been made by the human rights and development communities to rethink development from a human rights perspective. What we have learned is that there is no perfect model or universal policy template for the complex economic and social challenges of our time. The so-called "Washington consensus" failed to bring the prosperity many had hoped for, and its ideology of market fundamentalism left little room for international human rights, which require – among other things – an active regulatory State.

There has been much talk since of a "Beijing consensus," valuing wealth distribution and self-determination, rather than GDP growth alone, and recognizing political and cultural differences within a common global framework. A pluralism of values is a healthy and necessary thing in our multi-polar world. China, with its rich history and rising influence, will play an increasingly prominent role in this global dialogue.

I would posit, however, that the human rights framework offers a third, more holistic conception of development, one that recognizes the indivisibility of civil, cultural, economic, political and social rights and sees the development process as geared to the fulfillment of these norms. Perhaps this recognition is reflected in the important statement made by the Prime Minister Wen Jiabao at the General Assembly last September. He said that respecting and protecting human rights, upholding social equity and justice, and striving to achieve the "free and all-round development of people" were "the important hallmark of a democratic country under the rule of law," and represented a "basic guarantee for a country's lasting peace and stability."

The challenge for all of us is to translate values into action. Today, more than ever, at a time of great economic, financial and environmental uncertainties, Governments, international institutions and non-government actors have a duty to work together to formulate and implement rights-sensitive development policies, to broaden and sustain development gains, and ensure that we do not exacerbate existing inequalities.

Ten years after the Millennium Development Goals (MDGs) were established, it is clear that the objectives of human well being and dignity for all, enshrined in the *Universal*

Declaration of Human Rights, will not be achieved if development is pursued in isolation from human rights. While some countries are on track to reaching a few of the MDGs, more than a billion people are still trapped in extreme poverty. Even in countries scoring major successes, such as China, large disparities still persist, with millions of people left behind in the race towards achieving the MDGs. In many cases, poverty is exacerbated by poor governance and the lack of human rights protection.

At the same time, China's experience shows that its extraordinary economic performances also came with notable progress in some areas of human rights over the last two decades. Let me share with you some facts and figures:

* For the last decade, thousands of law reformers have been working hard to produce laws, interpretations and regulations designed to bring greater fairness and accuracy to the legal system; The National People's Congress is about to reduce by almost twenty percent the large number of offenses that can lead to the death penalty;

* There were three thousand lawyers in China in 1978. Today, there are approximately 150,000 lawyers making Chinese legal profession the third largest in the world;

* By the end of 2009, some 3,274 legal aid organizations and 58,031 legal aid service centers had been set up at the provincial, city and county levels;

* Nearly 4 million enterprises and public institutions had set up more than 1.84 million trade unions across China by the end of 2009.

While there has been progress, the Prime Minister Wen Jiabao, last September, in his speech at the General Debate of the 65th session of the General Assembly also noted that there was still "room for improvement."

The Prime Minister's resolve also finds expression in the Outcome Document of the September 2010 High Level Plenary Meeting on the MDGs, wherein China and all U.N. member States reached a landmark consensus on the importance of human rights for the MDGs, and resolved that economic growth should be "equitable, inclusive and sustainable."

These commitments could not be more timely.

The global economic and financial crises have badly undercut growth rates in many countries. Growth is indeed necessary to generate resources to fulfill human rights. But growth, alone, as we know, is not enough. Firstly, GDP growth is, by itself, a poor measure of well-being, as advocates of a "Beijing Consensus" recognize. Moreover, in the last decade, independent research has shown how entrenched inequities can frustrate the prospects for economic growth and the achievement of the MDGs, and may generate conditions for violent conflict. Other analyses have shown a causal connection between substantial human rights violations and economic growth performance.

In this regard, OHCHR believes that more emphasis on the rule of law would provide for more effective pro-poor growth policies, and an enabling environment for development.

While the Government of China has gradually begun to move the administration of justice to a higher place on its development agenda, it is now timely to make a more profound commitment to the rule of law as required by the *International Covenant on Civil and Political Rights*. The ratification of the Covenant would represent a significant step in this direction.

Greater participation of vulnerable groups and their representatives in decision making can also greatly improve development policies. Transparency and freedom of information are needed in markets and public policy, alike. OHCHR noted for the last two decades the increasing and constructive role played by civil society in China. It is imperative to take additional steps to create an environment that will empower civil society to further participate in the future of the country. This would require an adequate legal and institutional framework in which an independent civil society can flourish.

When formulating development policies, equal attention should be paid to economic, social and cultural rights. In this regard, OHCHR welcomed China's constructive dialogue with the UN Committee on Economic, Social and Cultural Rights (CESCR) and other UN Treaty Bodies as well as the invitation extended to the UN Special Rapporteur on the Right to Food. Recommendations made by treaty bodies and UN special Rapporteurs for implementing economic, social and cultural rights in China represent an important tool for policy makers and development practitioners as they provide guidance for higher standards of qualitative development within an accountability framework. They help to measure the political will, obstacles encountered and progress made, to identify new trends and innovative action, and to complement the efforts made by the Government. OHCHR is of the view that China would also benefit from a similar constructive dialogue with the UN Human Rights Committee.

The outcome of the Universal Periodic Review (UPR), which China like all other UN member states underwent before the Human Rights Council in 2009 also provides a framework to integrate human rights into development policies. Among the conclusions and recommendations of the UPR endorsed by the Government of China, many are relevant to development. It includes inter alia:

1. To create conditions for an early ratification of the ICCPR; and continue to advance the rule of law and to deepen the reform of judicial system;

2. Enhance the quality of life of Chinese people through the enjoyment of economic, social and cultural rights;

3. Strengthen the positive engagement with civil society, non-governmental organizations and academic institutions;

4. Continue its efforts to further ensure ethnic minorities the full range of human rights.

In her 2010 Annual Report to the Human Rights Council, the High Commissioner

noted that devising practical mechanisms to follow up and ensure implementation of these recommendations is an important challenge for the future. She has encouraged States, UN entities and other relevant stakeholders to work together to identify specific steps to accelerate national implementation of recommendations.

During his recent visit to China, Director-General Pascal Lamy noted that China is now an important partner for developing countries, which can share lessons learned and provide expertise.

In light of China's expanding global influence in Asia and in the world, China's diplomacy will indeed increasingly shoulder important responsibilities vis-à-vis developing countries. This will include working actively towards equitable multilateral trading, investment and financial systems that guarantee the protection of human rights, formulating rights-sensitive development policies in accordance with the 2008 Accra Action Agenda, and taking measures to ensure that overseas operations of companies headquartered in its jurisdiction are respectful of the international human rights obligations of both the home and host State.

In this way, China can not only use the human rights discourse to enrich its own development model, but can help to promote the cause of peace, security and sustainable development worldwide.

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CULTURAL DIVERSITY AND HUMAN RIGHTS

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The Concepts of "Putting People First" and "Regarding Harmony as the Fundamentality" under the Framework of Cultural Diversity

Ye Xiaowen
China

Human civilization is currently undergoing another important turn. Following the economic globalization, cultural globalization has become an inevitable trend.

Traditional Christian civilization and Islamic civilization insist monotheism and universalism. Just like Samuel P. Huntington observed, "From its origins Islam expanded by conquest and Christianity did so when the opportunity appeared. The parallel concepts of 'Jihad' and 'Crusade' not only resemble each other but distinguish these two faiths from other major religions in the world."[1] This reflects suspicion of stressing only on one's own "human rights" while neglecting other people's "human rights." Differently, Chinese civilization reflects the spirit of "cultural diversity and human rights" more, stressing that "Don't do to others what you don't want to be done to you;" we also do not force others into what we believe is good. Mencius believed that someone is considered to be "good" at the beginning when people think he is kind and easy to get along with. He is considered as a good people. Then people may observe whether he has his own contents, or his internal resources. If he has his own "contents," he is considered to be trustworthy, which is better than only "to be good;" given he has abundant contents, then, he can be regarded as "beautiful," or "substantial;" if he is not only substantial, but also glorious, he is "great;" providing he is not only glorious, but also can convert himself and other people, he can be considered as "sage."[2] In the process of converting himself and other people, he must specially respect other people's human rights, insisting everyone has his or her own beautiful aspects and can coexist, just like the numerous stars demonstrating their own shine in the sky. Even if he wants to influence other people with his goodness, he never forces it into others, but demonstrates his goodness to other people, just like the "North Star staying where it is and is surrounded by other stars."[3] That means that China does not rely on external expansion or "expand by conquest," but to

1. *The Conflict of Civilizations.*
2. *Mencius*
3. *Analects of Confucius: The Practice of Government II.*

attract and influence others with its cultural charms based on its self-dependence and self-examination. This is what we called "the North Star staying where it is and is surrounded by other stars."

Vertically, culture contains three layers of materials, system and consciousness; horizontally, culture covers three areas, namely, the relations between people and the nature, the relations among people and the relations between human race and oneself. Such ideology of understanding the nature, the human race and oneself collectively reflects the spiritual implication of Chinese culture. Seeking universal harmony between human race and the nature, among human beings and between human race and oneself is the basic idiosyncrasy of the Chinese culture, and, of course, can more reflect its care about the "human rights."

The quintessence of Chinese traditional culture is "valuing harmony." Of the three outstanding civilizations in the world, western civilization respects liberty, Islamic civilization upholds equality, and Chinese civilization espouses tolerance, hence the values of giving priority to harmony.

Harmonious coexistence of human beings and the nature is the precondition of the development of human society. Resources and the environment are the basic conditions for human existence. The development of human civilizations always relies on the nature. Human beings can understand the nature and get survival and seek development from harmonious coexistence with the nature, but cannot ruin the nature. One of the important reasons for some ancient civilizations to fall down from prosperity is their wanton exploitation and depredation of the nature, resulting in the punishment of the nature to human race and leading to the tragedy of civilization. Chinese culture calls for the concept of "unity between human race and the nature," insisting that human beings should follow the natural law and should not try to unilaterally conquer the nature so as to realize harmonious coexistence between human race and the nature. According to Chinese culture, human beings should "unite with the heavy and the earth for morality, the sun and the moon for the shine and the four seasons for the sequence."[1] Through promoting the spirit of "humanity" around the whole world to benefit all the living creatures such as grasses, trees, birds and beasts, man can reach the level of integrating everything into one and obtain seamless combination and development of the heavy, earth and human beings.

Harmonious coexistence among people is an important indicator of social civilization, as well as the basis of national stability. Chinese traditional culture specially stresses on harmonious coexistence among people and encourages harmonious people-to-people relations through advocating the spirit of "humanity" and promoting the concepts of being kind to other people, being considerate and seeking common ground while reserving

1. *Wenyan*

differences. "Humanity" occupies the unshakable core position in Chinese traditional culture. The Chinese character of "ren," which means "humanity," resembles two persons. There should be love between persons and "ren" just means love. In Chinese traditional society, "ren" is the highest moral objective, as well as the universal standard for morality. Statistics show that in *Analects of Confucius*, the classics of the Confucianism, "ren" was mentioned as many as 104 times. The figure indicates the importance of "ren." China's renowned ancient ideologist Confucius noted that "in the usage of ritual, it is harmony that is pride; the way of the former kings got its beauty."[1] Mencius said that "Opportunities vouchsafed by Heaven are less important than terrestrial advantages, which in turn are less important than the harmony among people."[2] All these ideas indicate the pursuance of harmonious people-to-people relations.

In terms of the relations between human beings and oneself, Chinese traditional culture seeks harmony between the body and the heart and insists on self-recognition. Lao Tzu said that "those who understand others are intelligent and those who understand themselves are wise."[3] That is to say, a person who can clearly recognize and treat himself is the wisest person, and is the most precious and estimable. Self-knowledge is wisdom. It is very difficult for a person to understand himself well enough. Why Lao Tzu chose to use the word "wise" has its deep meanings. What is "wisdom"? "Wisdom" is on the opposite side of "darkness" and "blindness." "Wisdom" means having good vision while blindness means losing the vision. If a person can see other people while neglecting himself, he is in his own blind area. Chinese traditional culture requires us to go out of our blind areas to where we can see ourselves clearly. On the basis of self-recognition, we can reach the level of body-heart unity through tempering ourselves, improving ourselves, treating ourselves well, behaving properly, being broadminded, being contented and happy, and being ease-oriented.

We can say that "harmony" is the eigenvector of Chinese history and culture, as well as the life-long belief and ideological basis of the ancient sages. Harmony is different from integration. Integration means to put different things together and melt them and lose their original states. Harmony means putting different things together; they can coexistence but still have their own characteristics. As everything and everyone are different, we need to encourage harmony; and only through harmony can they be long-lasting. The ideology of "harmony" reflects the universal rules of matters and thus can follow the time and be developed. The idea of "harmony" can be found in China's Confucianism, Buddhism and Taoism. The spirit of "harmony" is a kind of recognition, respect, appreciation and unity. The basis of "harmony" is to seek harmony without uniformity, being tolerant to each other,

1. *Analects of Confucius: Xue Er.*
2. *Mencius: Gongsun Chou II.*
3. *Lao Tzu*, Chapter 33.

seeking common ground while reserving differences and pursuing common growth. The way leading to "harmony" is to seek mutual understandings through dialogues and peaceful coexistence, seek unity with consensus for common interests, and seek harmony through tolerance for harmonious development. "Harmony" is a kind of philosophy of magnanimity which consists of tolerance and selection, combination and communication, inheritance and innovation. The ideology of "harmony" should be strictly followed and digested so as to follow the trend of goodness and beauty. The ideal stage of "harmony" is to realize universal beauty.

By applying "harmony" in interpersonal relations, we can treat people with tolerant attitude and gain their trust; by applying "harmony" in politics, we can promote history development and culture prosperity; by applying "harmony" in economy, we can promote production development and economic prosperity; by applying "harmony" in culture, we can let various schools of thought contend and encourage theoretical innovation; by applying "harmony" in health preservation, we can become energetic and maintain long life; by applying "harmony" in strategic decision making, we can pool numerous talents, have good suggestions, get smooth communications between the upper and lower levels, have harmonious relations among colleagues, rectify malpractices in an earlier date and obtain continuing innovations; by applying "harmony" in diplomacy, we can help various countries to realize peace.

The theme of the present era is peace and development; but the world we are facing is not that harmonious. Human race has various disputes and contradictions in many issues such as struggle for natural resources, balance of the international orders, recognition of ideologies and beliefs of religious civilizations, leading to hegemonism, power politics, territory disputes, terrorism, environmental pollution, global warming, expansion of poverty and increase of suicide, etc. In general, this reflects serious conflicts between human and the nature, among people and between people and oneself, which lead to ecological crisis, humanitarian crisis and spiritual crisis of human race. This is the common challenges that mankind faces in the 21st century, which are relevant to the future existence and development of mankind. In a harmonious world, a person can scientifically and reasonably treat his relations with the nature, other people and he himself so as to realize harmonious relations with the nature, other people and himself. China's "harmony" culture with unique charms can bring new intelligence for human beings to solve their crises and conflicts. As the British philosopher Bertrand Russell said, the world is in urgent need of some of China's most famed ethic qualities. Of these qualities, "I believe harmony is in the first place." Given the quality can be adopted by the whole world, the planet will have more happiness than now.

Several hundred years ago, Western Europe witnessed the Renaissance, which lasted for more than 200 years, helping Western Europe out of the obscuration and darkness of

the Middle Ages and embrace the dawn of modern civilization. The Renaissance is the dividing line between the Middle Ages dubbed with "dark ages" and the modern age, as well as the prelude of Europe shaking off the shackles of decadent feudal religions and starting expansion worldwide. The essence of the Renaissance was to promote humanitarianism and combat religious authority and godhood. In the Middle Ages, an ideal person should be self-abasement, negative and inert. People's position in the world is negligible. The Renaissance discovered people and their greatness, affirmed people's value and creativity and promoted human rights and human nature in an unprecedented manner, becoming the energetic appeal to encourage people to break through various barriers in the Middle Ages. The period of this time is thus called the "age of the giant."[1] The development of modern sciences, the Great Discoveries of Geography and the birth of nation-state were encouraged by the human-oriented spirit initiated by the Renaissance. The Renaissance freed people out of the shackles of the godhood and liberated productivity out of the fetters of feudal society. Human's roles were greatly expanded; they can go into the space and deep under the earth, summon wind and rain, modify gene and create human beings with test tubes… The 20th century witnessed the great development of human society. In the 100 years, sci-tech progress, economic development, ideological emancipation and artistic innovation demonstrated people's wisdom in an unprecedented way, which must have been impossible in the previous several thousand years.

However, the 20th century also saw mass slaughters among people, mass destruction of the nature, large-scale of poverty, hunger and disease. In the 21st century, the human society is facing the unprecedented development opportunities, as well as extraordinary challenges. We see that the "human" liberated by the Renaissance is now excessively exaggerated: "human" over exploiting the nature, polluting the environment, warming up the globe, doing whatever they want to the society, causing regional conflicts, maintaining increasingly fiercer power politics and terrorism, harming other people for one's own profits, cheating, causing the overwhelming sub-prime mortgage crisis and nearly causing global economic recession and panic. Owing to the ethic crisis and environment crisis, the mankind is now in the global crisis.

Human beings in the crises need redemption and social development also needs to find new orientation. The era is calling for a new renaissance. The classical Renaissance discovered the value of individuals and awoke individual spirits. Currently, we need to update our cultural value, change the attitude toward human and human value, rectify the over-expansion of individual spirits and realize the value restraint to "people as a group." Efforts should be made to help the excessively exaggerated human back to the "harmonious"

1. Engels: This was the greatest and most progressive change that human race had never experienced, an age that needed giants and had giants – in thinking ability, passion and character and in the versatile and knowledgeable.

human, and construct a new "harmonious world" with harmonious relations between people and nature, people and society and among people themselves.

Thanks to its unique spirit, Chinese culture is in line with the demands of the era. British historian Arnold J. Toynbee noted that the unification of the world is to avoid suicide of human beings, and it's the Chinese people with their unique thinking cultivated in the two thousand years who have made the best preparation among all the nations in the world. Then, what is the "unique thinking"? In general, it is the persistent "harmonious ideology" of the Chinese nation.

China upholds the mode of "constructing a harmonious society" domestically and "jointly building a harmonious world" internationally. The "human-oriented, comprehensive, coordinated and sustainable" Scientific Outlook on Development embodies the broad wisdom of the Chinese culture, and covers the core connotation of the new renaissance – all-round, harmonious and scientific development of the human society.

In 1950, Germany thinker Karl Theodor Jaspers used "Axial Civilizations" to describe the civilizations mushrooming in various regions worldwide in the sixth century B.C. Today, the human society is facing new historical turn and maybe the new "axial age" is being brewed. Emergence and cooperation of the multi-polar world and the exchanges and combination of diversified civilizations are encouraging the new renaissance, just like the magma running beneath the earth looking for the crevice for eruption. Probably, the emergence of the new axial age and new renaissance is the inevitable glory of the "cultural diversity and human rights."

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Vice-president of China Society for Human Rights Studies.)

Cultural Diversity and Human Rights

David Alton
UK

When China's previous distinguished Ambassador to the United Kingdom, Madam Fu Ying, returned to Beijing earlier this year, she said that she would never forget a British boy called Isaac.

Distressed by the news of the 2008 Sichuan earthquake, which was the 19th deadliest earthquake of all time and which claimed the lives of 69,227 Chinese people, and left 300,000 people injured, Isaac wanted to take some action of his own to help.

So, young Isaac asked his friends and neighbors to sponsor him for every mile he walked from his home in Wales to London, raising money and drawing attention to the plight of the victims as he went*: "An ambassador,"* said Madam Fu Ying*, "will never forget that."*

Isaac's story brings to mind another story – the story of a boy who is walking along a beach where thousands of dying star fish have been left high and dry by the retreating tide. An incredulous adult asks the boy, who is throwing the starfish, one by one, back into the water, why he is bothering: *"there are simply too many; it won't make any difference"* says the adult. *"But it will make a difference to that one"* retorts the boy.

Isaac's actions were like the actions of the boy on the beach.

Our individual actions, and the personal decisions we take, demonstrate whether we are truly committed to a universalistic view of humanity, to the alleviation of human suffering, and to the upholding of human dignity. Gandhi rightly said we should *"be the change you wish to see."* Acts of common humanity are at the heart of what it is to be human; they are what bind us together.

There is a foot-note to Isaac's story which is also worth mentioning: *Isaac came from Wales*.

China is a huge country of 1.3 billion people; Britain is much smaller, with 61 million people; Wales, Isaac's country, is smaller still, with just 3 million people.

Yet, Wales, despite being a part of the United Kingdom has its own capital, Cardiff, and its people are fiercely independent, incredibly proud of their history and have their own language – officially protected since 1993 by the Welsh language Act, spoken by one in five, and by the Government of Wales Act, 1998, which provides for all official documents and web sites to be produced in Welsh and English – as well as providing for a devolved

Welsh Assembly in which, like the Scottish Parliament and the Northern Ireland Assembly, legislative and cultural issues may be determined.

In Northern Ireland, after three decades of terrorism and the loss of 3,000 lives, devolution and power-sharing has been the fruit of the peace process; it was the long overdue political response by the major parties to Northern Ireland's long-running violence. They had finally concluded that there would be no military solution.

In a British Province, where 60% believe themselves to be British and 40% believe themselves to be Irish, any proposal which treated one group as the victors and the other as the vanquished would have been doomed to fail: power sharing and devolution has recognized cultural diversity and human rights.

Happily, the situation in other parts of the United Kingdom has never been allowed to escalate into such shocking violence such as that which occurred in Northern Ireland. This should not disguise the fact that in Scotland, for instance, there are political organizations which campaign for outright independence. If, in the 1990s, the British Government had failed to address the increasing level of Scottish and Welsh alienation, we might well have seen an ugly outcome.

Instead, in both Wales and Scotland, the devolution of political power – genuine autonomy – has muted the more vocal demands of separatists demanding independence, whilst properly and sensitively responding to a genuine desire for subsidiarity (the principle that decisions should always be taken at the lowest possible level) and recognition of human diversity.

Devolved structures of government can enhance the stability, unity, and cohesion of a State and should not be feared by the central authorities but devolution and power sharing is only a small part of what is needed.

Many modern nations are a rich tapestry of peoples who have different racial origins, different religious faiths, different languages and different cultures, and they do not live in easily delineated geographical territories but cheek by jowl, street by street, in the same cities and towns. How, in these situations, do we create a respectful and tolerant environment, which accepts difference and which does not seek to impose a rigid or narrow uniformity?

Britain has dozens of ethnic minorities living within its shores and, in that respect it shares the same challenge as China, with its 56 ethnic minorities and diverse regional languages, in upholding cultural diversity and the human rights of minorities while simultaneously promoting community cohesion, shared values, and stability.

Any government will rightly place national unity, security and stability as three of its principle objectives. A wise government will always seek to assimilate and integrate all its citizens – regardless of an individual's race, colour, creed, orientation, gender, class or ability. A wise government will appreciate that if any group becomes deeply disaffected from

the rest of that society will in due course become a threat to the cohesion of the society.

Historically, Britain is an island of settlers and has a long history of integrating new arrivals.

The Celts, Romans, Anglo-Saxons, Norse and Normans arrived before the 11th century and by the seventeenth century saw the arrival of the first wave of refugees – Huguenots fleeing persecution in France. In 1655, Oliver Cromwell permitted Sephardim Jews, descended from Jews who had been expelled from Spain and Portugal, to settle in Britain.

By the eighteenth century the city of Liverpool had a black community and the oldest Chinese community in Europe was established in Liverpool by Chinese seamen arriving in the nineteenth century. It was also a century when vast numbers of Irish people, fleeing famine and starvation following the potato blight, arrived in Britain.

As China and many other nations have experienced, perhaps particularly the United States of America, our demographic profiles have been radically altered by history, economic adversity, persecution, civil war, famine, natural disasters, and sometimes by the human impulse to make a fresh start in some other place.

In Britain after the Second World War substantial migration from Africa, the Caribbean and South Asia – all the legacy of the British Empire – preceded the more recent arrival of immigrants from many parts of central and Eastern Europe.

Between 1991 and 2001 the number of people who came from one of the new ethnic groups, other than White, grew by 53%.

Professor Steven Vertovec, of Oxford University, in *"Ethnic and Racial Studies"* coined the phrase *"super diversity"* to characterize the composition of today's British population – and to explore the implications and challenges posed by such diversity.

For Vertovec *"super diversity"* is *"a notion intended to underline a level and kind of complexity surpassing anything the country has previously experienced. Such a condition is distinguished by a dynamic interplay of variables among an increased number of new, small and scattered, multiple-origin, transnationally connected, socio-economically differentiated and legally stratified immigrants who have arrived over the last decade."*

Dealing with *"super diversity"* – especially in the context of disaffected radical Islamists – is likely to be the most challenging question facing western democracies in the decades to come – but radical Islam poses a challenge way beyond the U.S. and Europe.

India, with the biggest Muslim population in the world, faces the challenges left in the aftermath of the bombings in Mumbai; Islamic countries such as Pakistan face a major identity crisis as they decide whether or not they believe in secular government; while countries like Iran and Afghanistan – with active cells of Al Qaeda and the Taliban and clerics who wish to impose a theocracy – have to decide whether the Middle Ages or the twenty first century are where they wish to be.

A world in which divergent religious beliefs, social mores, or gender leads to persecution and rank discrimination will never be a peaceful world.

I'd rather a society in which we can speak freely and practice our faith freely, within the rule of law, and so long as this in turn does not threaten others.

I also know that is a view held by many Muslims. The challenge will be whether we can build a bridge to Muslims of that disposition.

These are the countless good and peaceable Muslims, many of whom – in countries like Iraq – have been on the receiving end of suicide bombs and endless cycles of violence, and who have no desire to bring forced conversions, wage Jihad or impose Sharia law; and who do not regard all non-Muslims as second class citizens.

If we fail to disentangle the things and people we oppose from those we embrace, we risk inflaming hatred of all Muslims.

Islamaphobia, Christianophobia and anti-Semitism all have their roots in irrational hatred.

Like all religions the religion of Islam is multi-faceted, and there are a great many followers of Islam who choose an interpretation that is peaceful, spiritual, generous, hospitable, law-abiding and gracious. We need to understand the difference between Islam and Islamisation; the difference between those who cherish their religious beliefs and those who wish to wage war and seek to impose their beliefs on everyone else.

We should look differently at Islam, not just at the threat which we feel it might pose, but at what things we might hold in common. Among those common principles of humanity might be a respect for life, a culture of solidarity, a culture of tolerance and truthfulness and equal rights. Governing all of this is the golden rule of mutuality, reciprocity, what you wish for yourself, you wish for your brother.

Rigamortis sets in when we become brain dead. Every religion needs to demonstrate that modernity is not incompatible with religion; that faith must cling to reason; that it can coexist with other beliefs and no belief; and that it can play its part in building a worthwhile and vibrant society.

In the United States, and in many other countries, religious organizations have been the engines which have driven social progress and made incredible health, educational, and civic provision. Countries which seek to asphyxiate spiritual and religious energy lose a great deal. Certainly, unregulated capitalism, with no ethical framework and without the mortal framework which religious belief can provide, can be selfish, greedy and corrupt.

A shared approach of believers and non believers alike should begin with an emphasis on our duties towards one another – not simply on our rights.

Britain's Chief Rabbi, and leader of our country's Orthodox Jews, Lord Sacks, suggests that every citizens needs to consider his or her duties and responsibilities to the community

in which they live and not simply expect rights and freedoms to be conferred.

He tells a story in which he describes three different scenarios, each involving the arrival of one hundred strangers who have been wandering around the countryside looking for a place to stay.

The first one hundred are greeted warmly. Their host gives them empty rooms and tells them to stay as long as they wish. Everything is done for them but they remain as guests in someone else's home.

The second one hundred wanderers have plenty of money and they are welcomed at a hotel.

Theirs is a purely contractual relationship with the hotel's owner; but so long as they don't disturb the other guests they are told they can stay for as long as they wish.

The third one hundred are welcomed by the mayor and the civic leaders. There is no house or hotel available but the community does offer some land, building materials and help with the labouring. Their offer is: *"Let us do this together."*

These three parables offer three different ways of thinking about society and identity. The first two scenarios lead to ghettoes and isolation, the third to integration and a genuine exchange of gifts.

And says Jonathan Sacks, *"Society is the home we build together."* He argues that:

"Social contract creates a state; social covenant creates a society. Social contract is about power and how it is to be handled within a political framework. Social covenant is about how people live together despite their differences. Social contract is about government. Social covenant is about coexistence."

A few years ago, I was travelling in Israel and the Palestinian West Bank. As we left the town of Jericho we saw a lorry over turn on the road ahead of us. The lorry's load of fruit was scattered over the road and the Palestinian driver, who had fallen asleep, was badly injured and thrown out of his cab. Ironically, it was on this road that Jesus chose to set his story of the Good Samaritan who stopped to help the Jewish traveller who had been set upon by thieves.

From our air conditioned coach stepped forth a young German born Catholic doctor. With her was a nurse, a Protestant, from Lancashire. I don't suppose that mattered much to the driver, a Muslim, who desperately needed help. A little later some Jewish Israeli paramedics arrived and lifted the man to safety and took him away to hospital.

Muslim, Jewish, Christian: *humanity is at its best when reaching out to others*. When we lose sight of the human being made in the image of God and substitute hatred or enmity, we succumb to evil, we diminish ourselves and we make the world a little crazier. By contrast, endless cycles of revenge are no way to live. When you go on taking an eye for an eye the whole world ends up blind.

Sure foundations for our home together will not be found in a rights based culture and the exaggerated emphasis that has been placed on personal autonomy; it will be found in the language of shared duties, mutual respect and common humanity.

The language of rights, choice and autonomy – with scant regard to duties or obligations – is inadequate when confronted with the challenges that face us in the twenty first-century. We need a much stronger defence.

Within our western narrative we can call in aid the ancients: Aristotle, Plato, and Cicero. We have the three pillars of Hellenistic democratic ideals, Roman law, and Judaeo Christian belief. Eastern civilisation can call on its extraordinary history and the wisdom of great philosophers such as Confucius.

Confucius understood that before rights must come virtue*: "To be able under all circumstances to practice five things constitutes perfect virtue; these five things are gravity, generosity of soul, sincerity, earnestness and kindness."*

An understanding of who we are, and from what rock we were hewn, is central to our ability to live harmoniously and respectfully alongside one another. We also need some degree of humility.

I want to conclude with a story which reminds me how mistaken it is to seek to impose yourself, your culture, or your beliefs on others, or to arrogantly pursue policies based on self interest and domination.

Exactly one hundred and fifty years ago, on 18 October 1860, at the command of Lord Elgin, Britain's High Commissioner in China, one of the most shameful episodes of British history occurred. It was an outrage which has blighted the relationship of our two countries ever since and is a graphic example of cultural imperialism and the misuse of power and force.

It took 3,500 British and French troops to torch China's Old Summer Palace in Beijing – the Gardens of Perfect Brightness. It was a vindictive and philistine act which aimed to humiliate China's Qing Dynasty and assert the hegemony of the British and French occupying forces. Its consequences still reverberate today, and it is another of those unforgotten and unhealed chapters of history.

The burning of the palace was the culmination of the second opium war, waged by the British in China, a war whose lessons have contemporary resonance. The French writer, Victor Hugo, in his *Expedition de Chine*, described the pillaging and burning of the palace as akin to two robbers, *"breaking into a museum, devastating, looting and burning, leaving laughing hand-in-hand with their bags full of treasures; one of the robbers is called France and the other Britain."*

The pretext, which Britain gave in pursuing the Second Opium War – or Arrow War – of 1856 to 1860 was the killing of a French missionary, Father August Chapdelaine.

In reality, the British Empire and the Second French Empire pitted themselves against the Qing Dynasty with the objective of legalising the opium trade and expanding the trade in coolies – a derogatory slang expression used to describe the virtual slave labour and exploitation to which Chinese labourers were subjected.

The trade in coolies was the forebear of the human trafficking which continues to this day.

Along with the opium trade and the trade in people, Britain was determined to open up all China to British merchants. The opium war concluded with the British, French and Russians demanding and getting a permanent diplomatic presence in Beijing.

China was forced to pay reparations of 8 million taels to Britain and France. Britain acquired the territory of Kowloon, adjacent to Hong Kong, a territory taken at the end of the first opium war. The opium trade was made legal, and Christians were given the right to evangelise – a sad and discrediting linkage of religious freedom to the worst excesses of imperialism.

Most scandalous of all was the trade in opium itself. Vast numbers of Chinese had become addicted to opium and Britain, instead of helping to eradicate the addiction, became the supplier. The Chinese Government said: *"Opium has harm. Opium is a poison, undermining our good customs and morality."*

Instead of upholding China's policy, however, Britain decided to play the part of pusher and profiteer – the equivalent of today's urban heroin and cocaine pushers, not only government-sponsored and sanctioned but backed by force of arms. In the House of Commons, the young William Ewart Gladstone rebuked the British Government. He said, *"a war more unjust in its origin, a war more calculated to cover this country with permanent disgrace, I do not know."*

By the conclusion of the Second Opium War, and the burning of the Old Summer Palace, Britain had achieved its strategic objectives but its reputation was left in the ashes and charred remains of the Gardens of Perfect Brightness.

As we mark the 150th anniversary of these events and catch a glimpse of drug addiction, human trafficking, theft, arson, violence and humiliation, we might pause to consider how these unhealed and unforgotten events continue to play into the times in which we live now.

As China is exhorted to take its place in the world and consider its development role in Africa, or how it should be a major broker in countries such as Burma – perhaps pressing for the release of Aung San Suu Kyi – or in North Korea – especially in stopping the repatriation of women to forced labour camps – we should have regard to how China has traditionally perceived foreign powers, how it has been treated itself and how it now sees its own interests. Because of its own experiences, China will have an intrinsic concern about interfering with the sovereignty of other nations and this is not a call for the use of force or arms – rather, it is

a call for China to be a powerful force for good; an enlightened force for humanity; a foreign and human rights policy based on the Confucian principle of the cultivation of virtue.

By contrast, the actions of Britain and France, one hundred and fifty years ago, not only leave a shameful stain on British history but have understandably made China wary of seeming to exert influence beyond its own national boundaries.

But in the context of today's global relationships – facilitated by travel, the internet, and common threats such as global warming, nuclear proliferation and terrorism – great nations must demonstrate that governments and their leaders can be virtuous and altruistic in pursuing policies based on the promotion of the common good. This, after all, was the objective set out by the General Assembly of the United Nations in December 1948 in the Declaration of Human Rights, the preamble to which demanded:

"recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world…

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,"

And the first three articles of which make clear that human rights are not subject to territoriality:

Article 1.

* *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.*

Article 2.

* *Everyone is entitled to all the rights and freedoms 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 be independent, trust, non-self-governing or under any other limitation of sovereignty.*

Article 3.

* *Everyone has the right to life, liberty and security of person.*

These, and twenty-seven articles which follow, remain the basis for our discourse on human rights today.

I began with the story of a Welsh boy, Isaac. It was a story told by China's Ambassador to Britain. It illustrates the way in which an ordinary citizen can heal history through a single

act, perhaps proving the truth of what a sage once said, that: *"the man who saves a single life, saves the world."*

Respect for cultural diversity, the upholding of the rights of minorities and their beliefs, the embrace of duties and shared responsibilities, a reverence for the rule of law, and the promotion of community cohesion, stability, security and good governance, should be our shared objectives.

Ultimately, when we imitate Isaac, when *heart reaches out to heart*, in the pursuit of common humanity, our world will have become an enlightened and harmonious place in which to live.

(The author is Member of House of Lords; Lord Alton of Liverpool.)

Cultural Diversity and Human Rights

Jose Nery Azevedo
Brazil

The modern notion of human rights is inseparable from the idea that society is capable of ensuring justice by means of the Law and the State. Such notion cannot be severed from the principles that sustain society in philosophical and political terms: the universality and natural right to life, freedom, and thought.

In fact, it was modern society that inaugurated the political practice of drafting declarations to assure rights, in view of the fact that they are not acknowledged by everyone. Such rights need therefore both social and political consent.

Declarations also record precise historical situations. They aim at securing achievements resulting from major social changes or revolutionary landmarks, such as the Declaration of Rights of the English Revolution (1640-1688); the American Independence; the French Revolution (1789); and the Russian Revolution (1917). Declarations aim at protecting humanity from violence, after episodes of great trauma, such as the Second World War, Fascism, and Nazism. These instances led to the Declaration of Human Rights in 1948.

The modern configuration of human rights represents an important advance for the human developmental process. The praxis of human rights replaces conscious actions directed to fight inequality. The fight for human rights is based on ethical and political principles and values that are rational, universal, and directed to freedom and justice. This fight incorporated achievements that do not belong exclusively to the bourgeoisie. They are also part of the human wealth produced by the human gender throughout its historical development since ancient times.

In the context of the bourgeoisie society, however, human rights present the following contradictions:

1. Human rights are based on universality. Their universal approach is constrained by structural barriers of the capitalist society: a society that reproduces itself by separating classes, dividing labor, classifying knowledge, and placing a divider between private ownership of the means of production and the wealth produced by society.

2. Human rights (civil, political, social, economic, and cultural) are based on democracy and a bourgeoisie citizenship. This reveals their real limits – economic, social, and political – depending on each country and the historical context.

3. The bourgeoisie society is based on the private property of the means of production. Consequently, the Declarations of Human Rights present a contradiction: the property is private but laws are universal. When the private property is in risk, the State should protect it from non owners (Chaui: 1989).

4. Albeit tied to private interests, the State cannot resort solely to the use of force and violence. Thus, to ensure legitimacy and hegemony, the State incorporates certain claims that belong to the popular struggles for rights.

Thus, as a result of the establishment of capitalism and the class struggles in their various configurations, from a certain point in history on, the human rights banner is handed to political subjects who do not belong to the bourgeoisie: the workers – the creators of social wealth – albeit expropriated from the right of enjoying its material and spiritual benefits.

The social history of human rights is the result of class struggles, popular pressure, the organization of workers, and the political subjects vis-à-vis oppression, exploitation, and inequality. Such history is the account of specific struggles of the champions of progressive ideas. These connect with other struggles – anticapitalist, revolutionary, in favor of national freedom etc. – which in turn unite to defend freedom and social justice.

Brazil is now enjoying a very special moment in the fight for human rights. The pressure of social movements and progressive sectors of the Brazilian society has sought to prevent all forms of disregard for human rights. This is so in spite of the fact that we live the contradictions inherent to injustice and the unequal economic reality of the country.

In the past decades, the abstract discourse regarding human rights, widely employed by the neoliberal ideology that has taken hold of Latin America since the beginning of the 1990s, has become the prevailing way of thinking in this context.

It is a time in history when the abyss between inequality and freedom, between wealth and poverty has become incredibly deep, when inequality and poverty have reached levels never seen before: the extreme poverty of thousands by contrast to the wealth of a few. This is a time of relative loss of achievements in the field of human rights, characterized by the growth of poverty and violence.

Such poverty is present not only in the countries of the South, but also in developed countries: over 100 million people are suffering deprivation in economically richer societies. The downsizing of the State, in the countries where the neoliberal structural adjustment was carried out, led to the reduction of expenditures on public programs and services designed to cater for needs such as health, education, housing, social security, among others, which have been taken over by the private sector.

Insecurity and the lack of social protection are spreading, thus weakening life and health and generating unbelievable forms of violence. The political organization of the working class is suffering a slowdown, which affects the organization of movements and mirrors a

widespread disbelief in politics.

One of the policies deriving from this context is the criminalization of poverty, that is, blaming the poor for their social condition; which goes hand in hand with the naturalization of poverty and with "zero tolerance," which segregates all those who are considered guilty from the start: blacks, immigrants, homosexuals, drug addicts, that is, all those who are "different."

In Brazil, this context generates a culture of inequality and violence, whose outcomes for human rights take the form of a growing dehumanization process which reveals material poverty coupled with alarming spiritual poverty. Such process may generate religious intolerance, ethnic cleansing, genocides, collective rape, and hate crimes.

The defense of human rights is therefore weakened, and subsequently accused of constituting the defense of "outlaws," thus also marginalizing the professionals and activists who defend certain socially segregated populations.

As a Senator of the Republic, I have devoted my time to fight for the full guarantee of human rights for children, adolescents, the elderly, and all those who live on their own work. In the Brazilian Senate, I chair the Parliamentary Front to Fight Slave Labor – an evil which still afflicts our country in the 21st century. I am also vice-chair of the Federal Senate Human Rights Committee. I actively followed the works of the Parliamentary Investigation Committee which looked into crimes related to pedophilia, a committee which was instrumental in denouncing and combating such a heinous practice.

The defense of human rights in the present context calls for a reflection which cannot overlook the appropriate strategies for this fight, which means:

- asserting the importance of resisting in the presence of the growth of several forms of dehumanization;
- strengthening initiatives to denounce violations of human rights;
- enhancing the visibility of practices aimed at the social recognition of human rights;
- strengthening a critical culture of defense of human rights, by implementing courses, debates, media initiatives, educational initiatives, etc.;
- exposing the abstract discourse on human rights, thus revealing its meaning and ideological function;
- contributing to connect ethical motivations to political actions, among others.

This fight, as we see it, is connected to a project of society which cannot fit the limits of capitalism: it presupposes the overcoming of capitalism. Therefore, considering the barbarism that characterizes the growth of the destructive effects of capitalism upon life – in all of its dimensions – and considering the objective limits of the universality of human rights within the order of capital, this fight is necessary, but also limited. That's why our fight

is contemporary and urgent, but it implies the political awareness that its limitations can be pushed beyond this society, in the direction of human emancipation and the construction of a society in which it will not be necessary to fight for rights.

(The author is Brazilian Senator, Vice-president of the Committee on Human Rights and Participative Legislation, Brazilian Senate.)

Cultural Diversity and Human Rights

Pierre Bercis
France

Established in 1977, New Human Rights Association includes the right of existence of human culture into the category of new human rights, hoping to bring attention of the international community to the right of existence of culture.

Why?

Culture is an indispensable ingredient of human riches, and it is, as well, the valuable heritage of human beings. Once cultural diversity disappeared, the collective riches of human being would become meaningless.

Cultural diversity is just like species diversity of flora and fauna. When one kind of species becomes extinct, it can never be retrieved. This is a great loss not only to the flora and fauna, but also to human beings.

All the world nations give absolute priority to species diversity. Fortunately, thanks to the long-term biological movements globally, giving priority to species diversity has become a world trend. However, we do not pay adequate attention to cultural diversity. This is why we have the seminar at China Society for Human Rights Studies. We believe we urgently need new thinking and actions in this area, and we hope the seminar can arouse extensive attention from the international community. I'd like to express my gratitude to everyone here for your efforts.

Talking about cultural diversity and human rights, what does it really mean?

Let's first review the history of our human race.

With their wisdom, various nations in the world have developed their own cultures, which are independent from other cultures. This is the result of the lack of exchanges among these nations. For Chinese people, African people, European people… they have given full play their creativity and nothing can detain them. In this sense, they are lucky.

After that, European people began to travel around the world, even further than Chinese people; while Arabian people, though they failed to conquer the ocean, diffused their religion, Islam.

These are the preliminary exchanges between different civilizations: architecture, literature, sciences, languages, religions…

A nation did not have the desire to rule any other nation, except under occasional

religious pressure.

Thus, it was possible for European and Asian peoples to increase their exchanges with mutual respect as premise.

During the imperialism period after that, some countries forced their values and cultures into their colonies.

After conquering America, European people committed the crime of "cultural genocide," leading to extinction of great local civilization.

Now, let's have a look at the contemporary history. Nowadays, the threats to cultural diversity are not so serious as before, but more delicate and disguised. Officially, imperialism culture does not exist; but actually, it is real.

Hence, just like what General de Gaulle said, the United States tries to hypercritically use its movies and unilateral information to force its language, culture and lifestyle to the whole world.

I am talking about the current situation in France, 40 years after the death of President de Gaulle.

No matter through broadcast, TV or film, we can never watch or hear about cultures of China, Arab, Latin Americas, India, Russia, etc.

Everything is about the United States. It seems that the country can dominate the whole world, even though its culture is not better than others.

The result is the increase of violence and crime. Which American film has no violence?

Here, I appeal to awake all the nations, of course including our friend Chinese people. I want to say to them:

"Dear friends, rise and resist."

Resistance does not only mean taking up weapons. It first means to resist being dominated and unitary culture, especially when the culture is not the best one.

I, in France, require the Chinese and Arabian friends in France to become genuine French people and, at the same time, remain their mother language and tradition, under the name of respecting the culture, our honor and loyalty. Even living in France, they will not sever their connection with their mother countries. France, like other European countries, is one unit consisting of diversified cultures.

France has not only Gaul people with golden hair and blue eyes, but also Alsatian, Bretagne and Basque…

In Europe, British people, German people, Italian people, Spanish people…can live together in Europe, thanks to their own diversified cultures and wealth (Plato in Greece, Goethe in Germany, Mozart in Austria, Da Vinci in Italy, Cervantes in Spain…)

It is applicable worldwide. The world is linked up through the United Nations, not unification. Various cultures and languages need cooperation, not replacement.

Under the circumstance, China's roles are essential. It possesses great culture and its political status in the world endows the country with not only the powers, but also corresponding responsibilities. China is our friend and we hope it can achieve success in Africa. Differing from the forcible hegemony culture of the United States, China follows the principle of cooperation there.

We also hope China could exert a great role in promoting independence of various nations and cultures worldwide through diplomatic channels. The protection of Tibetan culture, which poses no threat to the country's sovereignty, is specially important within Chinese border. France is a republic connected by different cultures; thanks to the diversified culture under the premise of respecting human rights, Europe can be closely connected.

Let's compare with the American model. It is a unified country, just like a military troop. It appears to be consistent, but generates sadness, discontent and death.

My conclusion is: the right of existence is under the premise of culture. It is the essential right. Of course, it cannot replace traditional and universal freedom. Just like a removed part of the body, it may be "cultural," but is a part of a person's body.

Thus, I hope, through the seminar, the world's common wealth of cultural diversity can be a part of our fundamental social values and human rights. Meanwhile, our Chinese friends can remain their culture. Only by doing this can you be welcome like the friends from Africa, India, etc. Try to be yourself.

(The author is President of New Human Rights Association (Nouveaux Droits de I'Homme),
Member of National Consultative Commission of Human Rights.)

Human Rights, Cultural Rights and Cultural Praxis of Migrant Workers in China

– Taking Beijing New Workers' Culture and Art Festival as an Example

Bu Wei & Sun Heng
China

Cultural rights are an integral part of human rights. The realization of human rights and cultural rights depends on not only support from national policies and actions, also participation from citizens of all ranks and classes. Since China has begun "reform and open-up" in 1979, many rural people have entered in urban areas to seek new opportunities. According to national statistics, migrant "rural-urban" people account for one hundred fifty million.[1] Alike cross-border migrants in the world, they have been experiencing "cultural shock" and their culture has been marginalized by urban culture. Taking "Beijing New Workers' Culture and Art Festival" as an example, this article describes and analyzes how migrant workers strive to promote the realization of cultural rights within the framework of human rights.

"New worker" is the name for their identities made by a social organization of floating population in Beijing named "The Cultural Development Center of Beijing Migrant Workers' Home (hereinafter referred as "Workers' Home"), in order to replace the name "rural workers" presented in mass media and many other research papers. Established in 2002, the "Workers' Home" has launched five festivals in its location – Pi Village, Beijing far from the city centre and with 1,600 rural households that has gathered over 9,000 migrant workers since the 1990s. Those festivals include "The 1st Working Culture and Art Festival" (January 2009), "The 1st/2nd Floating Voice Culture and Art Festival for New Citizens and Children in Beijing" (June 2009 and May 2010), and "The 2nd/3rd New Workers' Culture and Art Festival" (October 2009 and September 2010), and have become a banner of new workers' culture in China.

1. National Statistics Bureau, http://www.stats.gov.cn/tjfx/fxbg/t20100319_402628281.htm; and http://www.stats.gov.cn/tjgb/ndtjgb/qgndtjgb/t20100225_402622945.htm, March 18, 2010.

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1. International Human Rights Framework: Cultural Rights are an Integral Part of Human Rights.

Talking from the development of human rights' framework, we have experienced the transformation from freedom of speech in media or personal level to cultural rights in citizens' or groups' level. This process marks the dynamic transfer of subjects of right.

In 1948, *Universal Declaration of Human Rights* laid the foundation of human rights in the international level. Article 19 points out: 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. Article 27 states: Everyone has the right freely to participate in the culture life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

In 1966, the 2200A (XXI) Resolution made by the 21st UN General Assembly adopted *International Covenant of Economic, Social and Cultural Rights*, which identified citizens' economic, social and cultural rights in legal form for the first time throughout the world: the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights. China signed this Covenant in October 1997. The Chinese government submitted the report on implementing this Covenant to the UN for the first time on 27 June 2003. The first article "people's right of self-determination" points out: "all people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Article 15 of Part III clearly states: the States Parties to the present Covenant recognize the right of everyone: (1) to take part in cultural life; (2) to enjoy the benefits of scientific progress and its applications. "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (See Article 2 of Part II of *International Covenant of Economic, Social and Cultural Rights*)

Above-mentioned articles of human rights and the development of human rights framework show that, as a citizen, firstly, everyone has the right to freedom of speech in personal level; secondly, everyone has the right to enjoy cultural achievements; and thirdly, everyone has the right to participate in cultural life.

On 2 November 2001, the 20th plenary meeting of UNESCO adopted the *Universal Declaration on Cultural Diversity*. Article 5 clearly points out: cultural rights are an integral part of human rights, which are universal, indivisible and interdependent. "All persons should be entitled to quality education and training that fully respects their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own

cultural practices, subject to respect for human rights and fundamental freedoms."

In the discourse of social rights and cultural rights, the right to communicate was affirmed. Based on the first and second-generation social rights, French scholar Karel Vasak who held a post in the UN proposed the third-generation human rights in 1977, which was deemed as "collective human rights." Vasak emphasized that rights had the evolutionary and dynamic features, and put forward five new meanings of rights, which were the right to development, the right of peace, the right of environment, the right of benefiting from common heritage of mankind, and the right to communicate[1].

According to Taiwan researcher Guan Zhongxiang, "the right to communicate refers to the right and ability to express participants' minds or ideas, not just the ability to passively receive all kinds of information or interpret messages, and also the right to be involved in disseminating information, and the most fundamental citizenship in the modern society."[2] Freedom of expression stated in Article 19 of *Universal Declaration of Human Rights* is the right to express opinions, and also a basic human right and right to communication. "However, if simply discussing such a right in personal level, we may easily neglect individuals' basic differences in real life. Especially at present, while communication technologies innovate fast and media ownership increasingly concentrates, practices of freedom of expression is not the simple ability to talk, but also includes whether citizens have the ability and right to use or exploit, even operate/run media for voicing. Therefore, discussing the right to communicate, we need to add 'social rights'." "The right to communicate not only emphasizes individuals' right to expression, and more important thing is how to provide the minimum standards of expression of personal opinions, so that participants will not be in poverty because of disadvantages in politics and economy."[3]

2. The Development of China's Cultural Policies

In recent years, the Chinese government and Ministry of Culture promulgated many opinions or policies on supporting grass-rooted culture and education. For instance, in 2002, Ministry of Culture of the People's Republic of China issued *Notice on Further Enlivening Cultural Life of Grass-rooted Masses*; in 2004, the All-China Women's Federation and Ministry of Culture jointly issued *Notice on Strengthening Cultural Construction of Rural Families*. On 29 December, 2006, the 25th session of the Standing Committee of the 10th National People's Congress made the decision: approving the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* adopted by the 33rd General

1. Lai Xiangwei, "*The Right to Communicate in Information Society*" *Information Society Research* (9), July 2005, page 185 to 203.
2. Editors Cheng Luqian and Luo Xiaonan, *Critical Media Literacy*, Taiwan Zhengzhong Press, 2005, page 233.
3. Editors Cheng Luqian and Luo Xiaonan, *Critical Media Literacy*, Taiwan Zhengzhong Press, 2005, page 234.

Conference of UNESCO on 20 October, 2005, and the main measures are: measures aimed at providing domestic independent cultural industries and activities in the informal sector effective access to the means of production, dissemination and distribution of cultural activities, goods and services; measures aimed at providing public financial assistance; measures aimed at encouraging non-profit organizations, as well as public and private institutions and artists and other cultural professionals, to develop and promote the free exchange and circulation of ideas, cultural expressions and cultural activities, goods and services, and to stimulate both the creative and entrepreneurial spirit in their activities; measures aimed at enhancing diversity of the media, including public service broadcasting. In 2009, the State Council also issued *Some Opinions on Further Prospering and Developing Cultural Causes of Ethnic Minorities.*

In particular, Ministry of Culture, Ministry of Finance, Ministry of Personnel, State Administration of Taxation jointly issued *Opinions on Encouraging the Development of Private Art Performing Groups* in 2005, which was the first special document on encouraging the development of art performing groups since the founding of New China. In recent years, the whole country actively implemented the spirit of the document; the private art performing groups achieved a certain development. According to incomplete statistics, there were more than 6,800 private troupes across the country, covering dramas, folk arts, dances, acrobatics, magic, circus, puppetry, shadow plays and many other art categories, and they performed more than 2 million shows annually. Many typical areas emerged, such as Baofeng in Henan Province, Shengzhou in Zhejiang Province, Shenyang in Liaoning Province, Linquan in Anhui Province, Rugao in Jiangsu Province and Putian in Fujian Province, and many outstanding private art performing groups emerged and developed, for instance, Henan Little Queen Yu Opera Troupe, Jilin Northeastern Duet-Dance Art Troupe, Jiangsu Rugao Jiuhuatong Troupe, Beijing 1998 International Youth Art Troupe, Hangzhou Sanjiang Yue Opera Art Troupe in Zhejiang Province and Sichuan Deyang Circus and other excellent troupes.[1]

In 2009, Ministry of Culture once again issued *Some Opinions on Encouraging the Development of Private Art Performing Groups*, pointing out: "private art performing groups are the importantly integral parts of socialist cultural cause of China, and the forces of prospering grass-rooted cultural market in urban and rural areas. Private art performing groups come from, grow up in and serve for the civil communities, which have significant meanings to develop socialist advanced culture and meet the needs of spiritual culture of masses," "cultural administrative departments at all levels should follow Scientific Outlook on Development, emancipate our minds, deepen the reform, strive to break down the

1. See www.ccnt.gov.cn/sjzz/whscs/ycsc/200906/t20090626_71435.html.

ownership barriers of operating subjects in the performing market, adjust the imbalanced dual structure of private art performing groups in urban and rural areas, establish a positive interaction mechanism between private art performing groups and state-owned art troupes, and further promote the prosperity and development of private art performing groups." And it also showed the will to promote the development of private art performing groups by measures and actions. Such measures and actions included: "cultural administrative departments at all levels should actively establish the special support fund for private art performing groups; and select private art performing group to bear certain performing tasks and governmental projects to performing in rural areas; provide rehearsal place, performing venues and equipment and other support for private art performing groups; support the team construction and talents training for private art performing groups, and reward the outstanding private art performing groups" and so on.

3. "Singing on a Central Stage Built by Ourselves" – Cultural Praxis from New Workers

In above, the right to communication has presented as the rights to access and use information and culture, and the rights to communicate information and culture. Among them, citizen have right to use and operate or run media for voicing. Here, media mainly refer to non-profit and alternative forms. As an example, the "Workers' Home" has adopted many forms for developing working class culture, such as workers' folk music, people's theatre, independent video/films, traditional opera, blog, website, Workers' Museum, Newsletter, Village Newspaper, magazine for migrant children, and community dance. They also create new media form MV (music video). It should be mentioned that the current cultural policies are conducive to new workers' cultural development. It was under the support of this kind of policies that "Working Youth Art Troupe," which was the predecessor of "New Workers' Art Troupe" belonging to "Home for Workers," won the award "National Outstanding Private Art Troupe Serving for Farmers and Grass-rooted Areas" of Ministry of Culture in 2005, and 50,000 Yuan at the same time. Supported by relevant departments of governments, this art troupe participated in the 1st Chinese Farmers Concert (2008), Earthquake Relief performance organized by Ministry of Culture (2008), Chinese Farmers Art Festival (2010), Beijing Chaoyang Pop Music Week (2010), and Ditan temple fair (2011) and other performing activities.

Since the founding of "Workers' Home," it always maintained a good relationship with the mainstream media. They sent messages to media before most of the performances and important events so as to actively influence public opinions, and open up the space for labors' culture. Many mainstream media have reported the activities of the New Workers' cultural events.

However, during the long-term cooperation with mass media, "Workers' Home" also encountered the problem of "difficult to be heard." For example, the performances, lectures or reports of "Workers' Home" should match up mass media's agendas and rules, and current affairs framework. During the process of this kind of cooperation, the voices of "Workers' Home" were always weakened. Under the influence of mainstream ideology and commercialization, staff of media would reproduce the cultural practices from migrant workers in their established framework. For instance, when reporting a member of the Art Troupe who liked comic dialogues, they put "Guo Degang in Pi Village" as the headline, summarizing a worker's growth story in the framework of mainstream culture, and questioning the significance of workers' cultural construction as "self-entertainment."[1] In fact, in the reports of print media, most of the reports about the 1st Culture and Art Festival were placed in the framework of "Celebrate the New Year, and entertain themselves." On TV, we could notice that simply dressed members from Workers' Art Troupe and migrant children, standing nearby the host who gorgeously dressed like a star, negatively received the so-called "sympathy" and "concern" from mainstream masses, which seemed totally incompatible. Even the show itself was to show "charity" of the mainstream groups. They were usually asked to sing some songs to match up the "rules" or "frameworks" that mass media made for ratings or ideological needs, and they could not sing the song they really wanted to sing. The leader of Art Troupe Sun Heng and his colleagues had been invited to participate in a seminar on the floating population. He said, "Those meetings ... just as someone is tired of delicious food and needs to add some new dishes. We are the new dishes. And our opinions are not taken seriously."[2] Actually, the Art Troupe spoke on the mass media in a limited and passive way, which was their limited choice under the existing production framework. Mostly, it is the representation of voices by "the otherness" but not workers' original voices. Therefore, Sun Heng and his colleagues thought, "We need a stage for ourselves," and realized that the stage, both material stage and spiritual stage, was impossible to be given, but jointly constructed by workers.

From October to December in 2008, in order to prepare for the 1st Working Culture and Art Festival, workers used an old tent left by a Japanese troupe to build a "new workers theater" which can accommodate more than 200 audiences in the workers' gathering village-Pi Village. The theater was very simple, but a stage for workers. The leader of Art Troupe Sun Heng wrote a poem, named "We Build Our Own Stage, and We Act Our Own Opera" meaning once they had this stage, they did not need to "show" on others' stages. Another member Xu Duo said, "Now we have our own stage, so we can express our opinions without

1. Reported on China Newsweek, 24 July, 2009
2. Bu Wei: "*Listen to Labors Culture Forum*," *New Workers Communication*, the 1st edition, 2009.

being compromised to mainstream culture."[1]

It was on this stage, which is built for themselves that "Workers' Home" created their own "Culture and Art Festival." The name of the 1st art festival was "Working Culture and Art Festival," and it was held from 1 to 3 January, 2009 in Pi Village, including folk song session, poetry session, drama session, video session and Labor Culture Forum. The 2nd art festival changed its name from "working" to "new workers," which was "New Workers' Culture and Art Festival." This means that "Workers' Home" no longer emphasized the subsidiary status of working, while stressing that they are independent worker groups. More workers' groups brought more music, dramas, poems and independent videos and other original works to the 2nd art festival. It also organized more creative workshops, Labor Culture Forum and seminars, such as people's theater workshop, music and social movement workshop, handmade models workshop, Play Media workshop for migrant children, and the seminar on the living conditions of migrant workers. The handmade model workshop was organized by "Stretching Branches and Leaves" – a female workers groups in Hong Kong. They helped labors, children, women and elders to display their experiences and contributions in their daily life through handworks and other art activities, which were not always seen and affirmed by others. Taiwan Workers' Band who participated in the art festival said, "Our music not only serves for workers, but also models the culture of working class, vulnerable people and hard-working people." The significance of the workshops of the art festival was that all works of culture and art not only spoke for workers and fought for workers' rights, but also explored, modeled and developed the culture of working class in social movements and innovative practices. This was the community culture from people, which might be "branching" and gradually formed workers' cultural capital.

As the soul of workers' culture and art, what are the voices of workers which are independent from mainstream culture? Many workers discussed their voices in the Labors' Culture Forum held by the 1st Culture and Art Festival:

1. Making workers' experiences visible

Workers' culture and art should reflect our lives, views and struggles, make our experiences and struggles visible and heard in our society. If nobody expresses migrants' experience, views, and feelings, these experiences, views, and feelings would not exist, not be heard, not be affirmed, and not become a positive experience and knowledge of our society. Workers' culture will break the silence.

2. Promoting the value of labor

"Workers' culture should "promote the value of labor." "So much labor was rejected from mainstream system. For instance, manual labor did not seem to be valuable;

1. Ibid

housewives' taking care of children was also labor, but not being counted. Now whether a person had value or not was judged by how much money he earned,"[1] and this value should be changed.

3. Taking "sharp weapon"

Workers' culture and art could be a sharp weapon to fight against mainstream culture that marginalized migrant workers and other vulnerable groups. Worker' drama "Our World, Our Dream" mentioned: mainstream culture sometimes gave us a kind of illusion which did not enable us to face our real problems. It turned out that we might lose ourselves and our confidence. Therefore, we should develop our own culture. As Sun Heng said, they could not get confidence and power from the mainstream culture that separated itself from rock-bottom labors, so that they would become more and more inferior. "Without creating our own culture, we would always be inferior."[2]

4. Establishing the subjectivity of workers' culture

Workers' cultural theories such as the relationship between capital, labor and culture should be discussed, while workers' cultural praxis should be recorded and developed. Also, some workers proposed the establishment of our own "Mao Dun Literature Award," and our own evaluation criteria, development of workers' criticism, and literature and art festival as communication strategy. Workers should have their own "base area" to create the subjectivity of workers' culture[3].

During the festival, some key words were discussed repeatedly. The first one is "capital," the second is "mainstream," and the last one is "subjectivity of culture." Workers gave criticism on cultural products controlled by capital; reflected the urban mainstream culture which marginalized migrant workers' culture; and tried to advocate the value of labor and model working class culture. The workers' criticism, reflection and advocacy produced the independent voices of new workers. These voices made the tent stage in Pi Village become one of important places for establishing the subjectivity of workers' culture.

We can see that migrant workers not only make use of the mass media but also operate and run non-profit media to voice. Moreover, they created a "workers' culture and art festival" brand. Here, workers are not a passive group, waiting for being granted the culture that meets their needs. They take action for developing workers' culture from below. From the perspective of human rights, the state and the relevant government departments should offer more support to new workers' culture, including material support (more subsidies and grants, etc.), spiritual support (offering more opportunities for cultural exchanges, etc.), promote the realization of the right to use mass media (workers speak in their "original

1. Ibid
2. Ibid
3. Ibid

voices," which are not "reproduced" by media), and offer more cultural development space in the mass media. Nowadays, confronting with the situations that commercial performances flood into the stage, and measuring the value of works by ratings and circulations, we think it is necessary to repeat the slogan of "art serves for workers, peasants and soldiers" in the *Talks at Yan'an Forum on Art and Literature* made by Mao Zedong. Workers' Art Festival is to revalue the labor culture or culture of working class, as everyone has the right to enjoy and create culture and art, and enjoy the right to express ideas by using media.

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Multiculturalism or Transculturalism: Towards a Cosmopolitan Citizen Based on Human Rights

Donald Cuccioletta
Canada

Introduction

All nations and all peoples are living and experiencing the process and effects of globalization. However, when referring to globalization, nations are issuing statements usually regarding economic and commercial globalization. It is on rare occasions that the process of globalization is referred to in areas of immigration, movement of peoples, culture (multiculturalism) and cultural exchanges (transculturalism), the withering away of the nation-state (perforated sovereignties) and the rise of the question concerning human rights (minority or majority). In my humble opinion, these are the real challenges facing us in the continued process of globalization for the 21st century.

Will Kymlicka, Professor of Philosophy at Queens University in Canada and recognized international expert on multiculturalism and human rights, particularly minority rights, states in *Multiculturalism and Minority Rights: West and East*, in reference to the internationalization of the question of minority rights, "There are two linked processes at work here. First, we see the 'internationalizing' of minority rights issues. How states treat their minority is now seen as a legitimate international concern, monitoring and intervention. Second, this international framework is deployed to export Western models to newly democratic countries in Eastern Europe."[1] Of course references made here are to Eastern Europe, but since the publication of this article, we now see that this western model blankets all rising democracies of our planet.

In a response to the western model, Daniel A. Bell, professor of political philosophy and ethics at Tsinghua University, writes in his recent book, *Beyond Liberal Democracy: Political Thinking for an East Asian Context*, " (…) both Western and Asian cultural traditions are complex and change a great deal in response to various internal and external pressures. Nonetheless, it is possible that most politically relevant actors, both officials and intellectuals, in East Asian societies typically endorse a somewhat different set of

1. Kymlicka, Will, *Multiculturalism and Minority Rights: West and East*, in Journal on Ethno Politics and Minority Rights Issues in Europe, #4, 2002.

fundamental human goods than their counterparts in Western societies now and for the foreseeable future. Different societies may typically have different ideas regarding which human goods must be protected regardless of competing considerations, and which human goods can be legitimately subject to trade-offs with other goods as part of everyday politics. (…) It may mean that some Western conceptions of human rights are actually culturally specific conceptions of fundamental human goods, not readily accepted elsewhere, too encompassing in some cases and too narrow in others."[1]

So here we have the face off. Both experts in their own right, Professors Kymlicka and Bell, clearly have pinpointed the divide with regards to human rights. On the one hand a Western model seemingly adaptable around the world, or in professor Bell's case an Eastern Asian model adapted to its cultural and historical heritage. Some would say that a conceptual divide on human rights gives credence to Samuel Huntington's thesis of the *Clash of Civilizations*, while others are predicting a new cold war based on the different models and concepts of human rights.

I disagree with both such evaluations. Because when we scrutinize the literature concerning human rights, we can surmise that the discussions concerning this issue are defined by the parameters of government policies, based of course on political and economic strategies, linked to globalization. Seldom do we notice the discussion on human rights bounded by the parameters of culture, multiculturalism, inter-culturalism and ultimately trans-culturalism. In essence therefore my presentation (article) will focus on the linkage between globalization, multiculturalism, transculturalism and human rights.

Multiculturalism in a Globalized World

The object fact remains that our world, or should I say our global village, is multicultural. The country I come from Canada has over 150 different ethno-cultural groups. The city I live in Montreal has 85 such groupings. China has 56 recognized different ethno-cultural groupings. Europe is experiencing the most important multicultural reality of its history. In Latin America, certain countries, such as Argentina and Brazil, half of the population are almost immigrant based. The continent of Africa and Asia are both a multiplicity of cultures, languages, religion etc. Our world is a cultural mosaic.

The interconnectedness of our world, brought on by globalization, has also produced in peoples around the world a fear of homogenization. A fear that their culture, their way of living, of thinking etc. will disappear under the pressure of, what I call, majority politics. This fear is felt and experienced; it goes without saying, by minorities.

1. Bell, Daniel A., *Beyond Liberal Democracy: Political Thinking for an East Asian Context*, Princeton University Press, 2006, p. 73.

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As John Tomlinson states in *Globalization and Identity*: "It is fair to say that the impact of globalization in the cultural sphere has, most generally, been viewed in a pessimistic light. Typically, it has been associated with the destruction of cultural identities, victims of the accelerated encroachment of a homogenized westernized, consumer culture."[1]

Manuel Castells, the prominent sociologist, believes and as he writes in the "Power of Identity" volume II of his seminal work, *The Information Age: Economy, Society and Culture*, that the primary opposition to the power of globalization lies in "the wide spread surge of powerful collective identity that challenge globalization … on behalf of cultural singularity and people's control over their lives and environment," and he continues "Our world and our lives are being shaped by the conflicting trends of globalization and identity."[2]

Therefore what we are witnessing, in reaction to this fear, is an up swing in identity politics. Identity in the context, of an anti-globalization mentality, is defined in connection with a multitude of aspects that create a comfort zone of acceptability. Language, and the safeguard of that language can define identity. Culture and the safeguard of that culture can also define it. Religion and the safeguard of that religion can also define it. In order words to understand this phenomenon of identity politics, is not only to recognize it, through societal practices, through legislation etc, but also to put in place mechanisms that will protect it and safeguard it for the future. In this fashion identity politics has been incorporated into the wider concept of human rights.

In this newly defined context of globalization, the fundamental question that confronts the nation-state is how to conciliate, because it is always a question of reconciliation, identity politics with the concept of human rights? And does identity politics supplant human rights or does human rights supplant identity politics? These are hard questions and challenges that we must face, not only as countries, states, but also as societies and peoples.

In this conciliation process, multiple solutions are enumerated, depending on historical context, political ideology and custom. Some nations favor integration, others pluralism and others multiculturalism. It is important to say a few words on the models of integration and pluralism.

The major proponent of integration is of course France. In the French model, all aspects of cultural identities must integrate into the secular approach of the French republic. Only then can one become a full-fledged French citizen with the subsequent protection of human rights as defined in the French constitution of the 5th republic. Any contravening position to this principle of integration is met with harsh penalties. This is not to say that there is no

1. Tomlinson, John, "Globalization and cultural Identity," in David Held and Anthony McGrew, *The Global Transformation Reader: An Introduction to the Globalized Debate*, Cambridge UK, Polity Press, 2003, p. 268.

2. Castells, Manuel, *The Power of Identity,* vol. II, of *The Information Age: Economy, Society, and Culture*, Oxford, Blackwell, 1997, p. 35.

opposition within France who see this application of French republicanism as arbitrary and even a violation in the concept of human rights.

The other model that is pluralism is usually attributed to the United States. The United States is a multicultural society, which lets society, not the state to integrate citizens into the concept of the republic. There are no public policies, nor does the constitution mention any integrative rules, to make sure everyone becomes an American and thereby profit from the *Bill of Rights*. The US is not a collectivist-minded society but one based on the rights of the individual, not always observed mind you, which makes their approach one of plurality based on choice. That is not to say that there are no attempts to impose, even by legislation, i.e., the State of Arizona has a law making the English language the official language of the state, certain parameters that would define what is an American.

The most prominent approach, in conciliating cultural identity with human rights remains the concept of multiculturalism. However, there are many forms of multiculturalism. In this paper we will look primarily at two, which we can assume are the most prominent in our world of today.

The first one is multiculturalism based on liberal democracy. Some experts such as Will Kymlicka have coined the phrase liberal multiculturalism, which facilitates the understanding of the concept. Nevertheless, we can see that the basis and the existence of this type of multiculturalism remains the concept of liberal democracy based on the concept of the western model. This type of liberal democracy is based on the principles of individual freedoms, justice and equality before the law, and the right to vote in a representative democracy. These are the guiding principles of liberal democracy and form the bases of the human rights principle.

Within this model liberal multiculturalism is an added policy, which in the case of Canada a state policy, that was legislated by the Liberal Party government of Prime Minister Pierre Elliot Trudeau in 1972. In Canada, liberal multiculturalism was instituted into law, in order to recognize institutionally the cultural mosaic that reflected the reality of the country since its inception. But because it is law there are strict rules and regulations that each citizen, as individuals, must follow, even though the law was constituted on the basis of ethno-cultural communities, hence a collectivist approach.

In order words, since the invocation of the *Multiculturalism Act* in Canada, the challenge has been to conciliate the individual rights and freedoms of the individual, the basis of a liberal democracy and the collective rights of each ethno-cultural community that exist across the country. On the one hand, we have human rights and freedoms for each individual citizen irrespective of race, color, religion, gender, age, profession and class. While on the other hand, we have cultural rights of ethno-cultural communities, based on customs, religion, history, language, and parental authority. This has led to many conflicts, which have

ended up before the courts. Competition has also emerged among the different ethno-cultural communities for the money distributed by the Federal government to protect and promote these communities, through various institutions, such as community radio and television, community schools etc.

Over the years, we have witnessed the rise of a corpus of critical research directed towards Canada's multicultural policy. Many as Neil Bissoondath[1] a successful writer in Canada of Indian decent, who emigrated from the Caribbean, feel that the institutionalization of multiculturalism has lead to a ghettoization of the different ethno-cultures in Canada. In order words, an institutionalized form of multiculturalism has lead to a reduction of the supremacy of human rights based on liberal democracy and to the hegemony of ethno-cultural rights based on custom etc.

Other critics such as Nancy Fraser write: "(By) enjoining the elaboration and display of authentic, self-affirming and self-generated collective identities, it puts moral pressure on individual members to conform to group culture. The result is to impose a single, drastically simplified group identity, which denies the complexity of people's lives, the multiplicity of their identifications and the cross-pulls of their various affiliations."[2]

Anne Philips, a Post-Multiculturalists' critic, also writes: "Multiculturalism exaggerates the internal unity of cultures, solidifies differences that are currently more fluid, and makes people from other cultures seem more exotic and distinct than they really are. Multiculturalism then appears not as a cultural liberator but as a cultural straitjacket, forcing those described as members of a minority cultural group into a regime of authenticity, denying them the chance to cross cultural borders, borrow cultural influences, define and redefine themselves."[3]

So we can see by these few critics that the institutionalized approach to multiculturalism has its faults and for many (not all here are mentioned), this approach does not fulfill the ultimate goal it was given, to attain a cosmopolitan citizenship based on human rights as proposed by liberal democracy. In essence the main critism of institutionalized multiculturalism is that it has trumped individual rights for collective ethno-culture rights.

An institutionalized policy of multiculturalism, as in Canada, has now forced the judiciary and the right of law to define culture, identities, making identities a political issue rather then a societal issue, decided and debated in the public space, with respect to individual human rights.

As Seyla Benhabib writes: "Multiculturalism involves a 'reductive sociology of culture' that risks essentializing the idea of culture as the property of an ethnic group or race, it

1. Bissoondath, Neil, *Selling Illusions: The Cult of Multiculturalism in Canada*, Penguin, 1994.
2. Fraser, Nancy, "Recognition, without Ethics," *Theory, Culture and Society*, 18\2: p. 24.
3. Phillips, Anne, *Multiculturalism without Culture*, Princeton University Press, 2007, p. 14.

risks reifying cultures as separate entities by overemphasizing the internal homogeneity of cultures in terms that potentially legitimize repressive demands for cultural conformity; and by treating cultures as badges of group identity, it tends to fetishize them in ways that put them beyond the reach of critical analysis (…) The culture based approach yields illiberal consequences including acceptance of the need to police these group boundaries to regulate internal membership."[1]

Benhabib therefore poses the right question: why should cultural grouping be policed? Should the boundaries, if they are necessary, not be policed by the commonality of human rights? In the area of Human Rights no cultural group can claim superiority over the other.

However, we cannot lay institutional multiculturalism, without recognizing its attempt to protect, under law, individuals of different ethnic background, against racism, and bigotry. In this area it (institutionalized multiculturalism) has to some extent, because of the force of the law, shaped peoples views and combated racism. But again this is done on a collectivist notion of culture. Many would say that in order to protect individual citizens of varied backgrounds, we just have to apply and widen the charted of rights and freedoms, which already protect individual and human rights in these different areas.

Subjectively there exists an institutionalized multiculturalism, but objectively there exists a social multiculturalism. Regardless of government policy, multiculturalism exits because our world is a multicultural mosaic. If we recognize this fact, therefore how can we maintain that in our contemporary societies there still exists a unique or pure culture? As Guy Scarpetta, wrote in *L'impurité*, "Impurity is the order of the day. The 'we' and the 'you,' includes also the 'he' and the 'she' of all linguistic groups, of all nationalities and of the sexes. We are of all the cultures. Each person is a mosaic."[2]

In Scarpetta's terms, culture is an evolutionary process. A process fuelled by the social phenomenon of immigration, the movement of groups and individuals, leading to a recognition of societies based on multiculturalism. However, multiculturalism is only the first rung in the social-cultural ladder and not the ultimate goal of society. The recognized reality of societal multiculturalism, must lead societies and nations to foster the necessary parameters to pass to the next level of societal integration. Here the concept of human rights for all, regardless of their multicultural back ground, based on the individual, represents the synthesis of the mosaic. Human rights are exactly that, rights promulgated for humans. The common denominator is being human, not your cultural background. That is not to say that human rights must not take into account the cultural heritage and history of the individual.

1. Benhabib, Seyla, *The Claims of Culture: Equality and Diversity in the Global Era*, Princeton University Press, 2002, p. 68.
2. Scarpetta, Guy, *L'Impurité*, Paris, Seuil, 1989, p. 26.

Transculturalism: Recognition in the Other

As we have mentioned above multiculturalism, whether institutionalized or societal, is only the starting point of understanding, applying, safeguarding and encompassing culturally based human rights. The ultimate goal of any approach to human rights based on a cultural awareness is a cosmopolitan citizenship. In my humble opinion, therefore we cannot reach this goal through institutionalized multiculturalism, but in a more forward-looking approach of transculturalism.

The South American scholar Fernando Ortiz originally defined transculturalism in the early 1960s.[1] His thinking, which eventually led to the definition of this social phenomenon, was based on the celebrated article written by the Cuban scholar José Marti. In this article in 1891, entitled "Nuestra America"[2] (Our America), Marti advances the idea that intercultural mixed peoples were the key in understanding and legitimizing the American hemispheric identity. In Marti's thinking the inhabitants of the Americas, and this process could easily be applied to any continent, were biologically and culturally mixed and therefore always part of the dialectic with the other.

Ortiz, following up on Marti's lead, proceeded to define the concept of transculturalism. Ortiz says that in its early stage, transculturalism is a synthesis of two phases occurring simultaneously. The first one is an objective process of de-culturalization with the past and the second, being a mixing of cultures in the present. The question of the past, history, cultural heritage etc., and the present, which seeks to re-invent in the present a forged identity, therefore circumscribes and envelopes' the process. In order words, a re-inventing of a new common culture based on the meeting and the intermingling of different peoples and cultures.

This idea that individuals and peoples independent of their nationhood, is a multiplicity of cultures, leads us to question the idea of a singular identity. Let's be clear here, we are not talking here about a psychological identity, but a cultural identity. One's cultural identity is not strictly one dimensional (the self) but can now be defined as a multiplicity of cultural identities. This multiplicity of cultural identities brings to the recognition of the rapport with the other. As referenced earlier to Guy Scarpetta, "Each person is a Mosaic." Hence we have a mosaic of cultures and thusly a mosaic of identities. The recognition of the other in the self brings us to a cultural approach based on human values that are shared and are recognized in the other. Here human rights based on the cultural identities recognized in the other ushers in a new parameter of the human dynamic that goes beyond the strict parameters defined by law and national policy.

We can therefore imagine and envision transculturalism as a new form of humanism.

1. Ortiz, Fernando, *Transculturalismo*, Mexico, 1965.
2. Mart, José, *Nuestra America*, University of Havana, 1980.

A new form of humanism, based on the idea of relinquishing the strong traditional identities and cultures, which were products of colonialism and imperialistic empires, interspersed with dogmatic religious values.

Contrary to institutionalized multiculturalism, which most experiences and critics have shown re-enforces boundaries based on past cultural heritages, acquired throughout history, transculturalism is based on the breaking down of boundaries. This leaves individuals to focus on the respect of the other, based on human rights and principles. Human rights therefore take place in a societal context and not only in a judiciary context, which at times becomes extremely complicated.

Transculturalism by proposing a new humanism, in the recognition of the other as self, places human rights at the center of mutual understanding of peoples and nations. This process of recognizing oneself in the other (transculturalism) leads inevitably to the development of a cosmopolitan citizenship. This citizenship becomes international, secured by universal human rights, based on ethics, equity, inclusion, human security, sustainability, and development.

Transculturalism because is not a total objective reality, needs a conscious subjective component besides individuals, peoples, and governments. It needs the envelope of human rights, based on the elements stated above. Human rights become the boundaries, the frontiers that are continually widened, and that respond to the development of individuals and peoples who become more an international citizen.

It is in this are of preserving and promoting, the emerging cosmopolitan citizenship that governments have to apply, preserve and foster the development of human rights.

With the integration of markets as prone by globalization, observers have however questioned the validity of globalization with regards to human rights and cultural identities.

Under globalization, the breaking down of tariff barriers has lead to an integrated world market place. Some applaud this others are fearful. Yet the globalization of cultures, the integration of peoples and the eventual recognition of the other, have been left aside. What is lacking in this globalization process and, which fuels the fears of different peoples and culture around the world, is a cultural concept of the world.

We have gone along way in developing an economic concept. Similarly we can see that nations are engaged; too timidly in my opinion, yet progressing towards a political concept. Yet the one that remains lacking, and the one that is most important in our Global Village, is the question surrounding culture without boundaries taking into perspective the movement of peoples, the constant changes in societies based on adherence to the concept of human rights.

Conclusion

Under a growing tide of adherence to cultural globalism and cosmopolitan citizenship,

the importance of universal human rights, as the adhesive that would make cultural globalism and cosmopolitan citizenship work, is vital. If institutionalized multiculturalism gives way over time to transculturalism, and I believe we are in the 21st century moving in this direction, universal human rights becomes the common denominator, the common tread, that secures each individual and cultural community in forging ahead, without fear towards a human understanding of our world.

As we have stated earlier, economics and politics, whether national or international, dominate our understanding of globalization and human rights. Most decisions taken by national governments in the Human rights field are defined by economic and political objectives. This is not a criticism on my part, but it is an understanding that is where, as nation-states we are at. In order words the globalized mentality, beyond economics and politics, as practiced by our respective governments is still deficient.

This deficiency is also shared by international organizations, i.e., the UN, cultural communities who still adhere to a narrow approach to multiculturalism and individuals who remain attached to embedded traditional cultures. Do not get me wrong here. Traditional cultures are treasures of history, but traditional cultures that maintain stagnation and impede the search for new frontiers are no longer the progressive force, maybe they once were in the past.

Therefore, a journey from institutionalized multiculturalism to transculturalism, which I believe would open new horizons, such as cosmopolitan citizenship, a new humanism, will direct us to under stand our world of globalization through a cultural prism based on universal human rights. Culture therefore becomes the eyeglasses through which we analyze, project and solve our problems, whether they are economic or political. Culture seen through the workings of transculturalism, becomes a pivotal process that breaks down boundaries between nations, peoples and individuals and leaves us with a humanism based on the concept of universal human rights.

Of course this new horizon would not produce over night. As Jürgen Habemas writes: "(…) even in a world wide consensus on human rights could not serve (presently) as a strong equivalent to the civic solidarity that emerged in the framework of the nation-state. Civic solidarity is rooted in particular collective identities; (while) cosmopolitan solidarity has to support itself on the moral universalism of human rights alone."[1]

The framework of the nation-state still commands the day; even through we are engaged in the process of globalization. Governments and elected officials therefore, who operate in a continued globalized world where national sovereignties are breaking down, should work in this direction? This also means that civil society whether represented by individuals; culture

1. Habermas, Jürgen, "Remarks on Legitimization Through Human Rights," *Philosophy and Social Criticism*, 24, 1998, p. 170.

communities, civil society groups etc. must also work in hand with elected officials.

The basis on which this collaboration should take is the incorporation of human rights as a vehicle for culture. But we must also recognize that culture in a transcultural sense, is an element to break down boundaries, raise awareness and understanding in a world based on humanism. A humanism that is not necessarily westernized, but is universal, created though the mutual recognition and understanding of different cultures as demonstrated by transculturalism.

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4. Habermas, Jürgen, *The Inclusion of the Other*, ed. C. Cronin and P. de Greif, Cambridge, MA, 1998, p.220-226.

5. McRoberts, Kenneth, *Misconceiving Canada: The Struggle for National Unity*, Oxford University Press, 1997.

6. Taylor, Charles, *Multiculturalism and the Politics of Recognition*, Princeton University Press, 1992.

7. Taylor, Charles, "A World Consensus on Human Rights," *Dissent*, summer, 1996, p.15-21.

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Human Rights and Its Development in Algeria: Good Governance and Cultural Diversity

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Algeria

After independence, Algeria has to face numerous difficulties: refugees returned; the people who suffered from the liberation war needed social and spiritual propitiation; the country needed rebuilding and government departments also needed construction. For such a newly established country, all the neglected tasks needed to be undertaken and effective supports from related institutions were needed.

Our efforts finally enabled us to maintain great progresses in various fields, especially in education, sanitation and employment.

Starting 1988, we realized that we must construct a law-based country and strengthen two-dimensional transforms (political democracy and economic liberty). Just like other countries, the development of a modern country and the construction of a democratic and transparent government were restrained by domestic economic and political factors.

From then on, the government began political reforms and established some publicly elected bodies. In February 1989, the national Constitution was issued by referendum, which was amended on November 28, 1989. The amended Constitution focuses more on fundamental liberty, separation of powers, independence of judicial power and respecting human rights. Meanwhile, a series of basic laws were issued, enhancing citizens' liberty rights and human rights.

Despite the chaos in the 1990s, Algeria still accelerated its process of democratization and, at the same time, enhanced political dialogues. Our government has been always adhering to the principles of consolidating a law-based country and promoting and protecting human rights.

The reform covers areas such as judicature, education, finance and sanitation. It is lifted to the national height and has collected a large number of professional talents and personages. Thanks to the reform, Algeria's legislation is in line with the world standard; meanwhile, association movements are increasingly encouraged by the government and have achieved important progress.

Algeria firmly believes in the achievements it has made in the process of constructing a law-based country, and it thus became one of the first countries that voluntarily acceded

to the African Peer Review Mechanism, an instrument aiming at assessing the roles of good governance in African countries' development achievements.

Acceding to the instrument enables Algeria to fully utilize the experience and information obtained during the assessment process. In the past 18 months, the assessment process covered the whole country under supports of National Governance Commission.

Algeria has acceded to all the conventions related to human rights, actively participates in international and regional human rights organizations and has long-lasting cooperation with theme and special mechanisms of UN Human Rights Council. In this sense, Algeria's human rights activities are diversified.

Voluntary transparency is widely spread among UN special rapporteurs, especially rapporteurs of human rights. Algeria has officially invited seven rapporteurs who had different mandates of human rights to Algeria for work visit.

International non-governmental organizations (NGO) have promoted the progress of human rights in Algeria. Their visits enabled them to comprehensively and closely understand Algeria's progress in human rights and assess these achievements. International NGO visits my country regularly, and the International Committee of the Red Cross also visited the penitentiary establishment under Ministry of Justice of Algeria on the occasion of signing a memorandum in 1999.

Besides the political, economic and social democratization, our country has made great efforts to promote cultural democratization. Algerian Government attaches great importance to the culture.

Algeria regards cultural diversity as the fundamental condition for dialogues among various civilizations, and even various cultures. Protecting and promoting cultural diversity and artistic expression are the two major methods widely recognized in the international community. Algeria plays a very important role in the development process of the two methods.

Algeria participated in the formulation of Convention for the Safeguarding of the Intangible Cultural Heritage of UNESCO, as well as is among the first countries to ratify it. Meanwhile, Algeria also ratified Convention Concerning the Protection of the World Cultural and Natural Heritage of 1972, and recorded seven archeological and historical relics on the World Heritage List.

The seven world heritage sites reflect various historical phases of Algeria (prehistoric stage, Rome and Muslim, etc.). They represent different historical periods and constitute a component of human wealth. Thus, the government funds to protect these sites.

In order to encourage exchanges and cooperation in culture area, Algeria has established cultural partnership strategy. Hence, Algeria holds international festivals regularly and constantly promotes its cultural products in many international exhibitions.

In heritage value addition and preservation of cultural heritages in Africa, Algeria held a Pan-Africa Culture Festival in July 2009. During the festival, we introduced and exhibited African cultures in various sectors, and different cultures also deepened their mutual understandings.

Besides the second Pan-Africa Culture Festival, Algeria also financially supported the exploration of the feasibility of establishing a pan-Africa culture institute. In order to revitalize the Grand Museum of Africa in Algiers, Algeria also proposes to implement Ouagadougou Agreement.

Algeria is the place where Arabic Translation Academy locates. In 2007, Algeria also became the "capital of Arabic culture," because we held a very important event of exhibiting arts and literature of Arabic countries all year round. Now, Algeria is working hard to prepare the activity of "Tlemcen – Capital of Islamic Culture" in 2011, aiming to exhibit the abundant Islamic culture and its relations with other cultures. The activity will consist of some important cultural and religious celebrations in forms of Muslim national week, seminars, themed conferences, dramas, poems, exhibitions, pop music and dances.

In terms of strengthening mutual recognition and understandings among cultures, Algeria regularly organizes international seminars and meetings to discuss issues such as dialogues between culture and religion, cultural development, preservation of cultural heritages and art innovation and history. Algeria also holds cultural weeks overseas to enable Algerian artists to exhibit their talent and creativity.

In order to encourage cultural exchanges among brother countries, Algeria also attended Shanghai Expo, which lasts from May 1 to October 31, 2010. It is one of the first countries that actively participate in the international grand event.

At the Expo, Algeria has an independent pavilion, featuring urban planning and national architectures with Arabic Muslim characteristics. Meanwhile, the pavilion also organized many performances so that audiences can enjoy the traditional and modern music in Algeria. On July 31, 2010, Shanghai Expo held Algeria National Pavilion Day. Abdelaziz Belkhadem, Minister of State and Personal Representative of President presided over the ceremony.

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Diversity as the Momentum for Development of Human Rights

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In terms of the general property, human rights are a cultural phenomenon. It is the result and manifestation of continuous evolution of human culture and civilization. Therefore, in protecting and developing human rights, ample attention should be paid to its cultural property, and thoughts and advancement of human rights should be based on the perspective of cultural and civilization development. The diversity of culture shows that human rights are diverse in nature. The diversity of civilization and culture is the momentum for cultural progress. Accordingly, the diversity of human rights is the momentum for its development. Diversified existence and extensive development of human rights should be respected and protected, so as to promote the realization and development of human rights in nationalities and countries around the world.

I. The Cultural Property of Human Rights

As the name of basic rights entitled to a human being, human rights is a concept proposed in practices of safeguarding self interests and striving for self liberation. Its advancement is the result of development in human civilization and culture, as well as the indication of human being entering a higher stage of civilization. Marx remarked that "the essence of man is no abstraction inherent in each single individual. In reality, it is the ensemble of the social relations."[1] The historicity and concreteness of human being means that human rights are historical and concrete. Rights entitled to mankind will unavoidably concern everything and their interrelationship in the society. From advancement and illustration of human rights by modern bourgeois thinkers to multiple efforts to safeguard and promote human rights by the international community after WWII, there have been various descriptions of human rights, but there are also many common grounds regarding its basic domain. At first, a part of human rights "is political rights, to be exercised together with other people. The content of political rights is participating in the community, and political community at that, and in the country. Those rights fall under the category of political

1. *Selected Works of Marx and Engels*. Vol.1. People's Publishing House, 1955, p. 56.

freedom; they are a civil rights."[1]

As the fundamental right of human rights, this civil right is based on freedom and equality. In addition, there are non-civil rights, like right to subsistence and development. The equality and inequality, freedom and restriction, survival and destruction, development and stagnation of human rights are to some extent embodiment of contests between the good and the evil, the two basic concepts of morality.

Therefore, human rights are not only legal, but also moral. However, both law and morality can be boiled down to culture. We have to admit that human rights are a kind of culture, cultural phenomenon and cultural product. As a culture, human rights have succeeded the simple yet common idea of "encourage the good and discourage the evil" all along.

Culture is a "certain level of development of human being and society, represented in the various types and forms in which people lead their lives and conduct activities, as well as the material and spiritual wealth created."[2] There are three types of cultures, namely, material culture, institutional culture and spiritual culture. Generally, material culture includes the process of material production and its products, and can be extended to human activities and the materialized objects; institutional culture generally refers to social institutions, including economic, political, legal and religious systems; spiritual culture is "the sum total of human knowledge and consciousness borne by commonly recognized symbol systems."[3] With human knowledge and consciousness as its information connotation, spiritual culture is carried on all commonly recognized symbols other than technical, contractual and institutional symbols.

In the above three constituent stratifications of culture, spiritual culture is at the core, upholding and sustaining the internal essence of culture, making possible its stable succession in ever-changing space and time. As a cultural phenomenon, human rights also have three clear-cut representations. The first is the spiritual culture connotation. The concept of human rights begins as a spirit and consciousness. Modern bourgeois enlightenment thinkers summed up the experience of human being pursuing self liberation, unequivocally proposed the slogan of human rights and invested in it the meaning of vying for liberation of mankind, for the purpose of opposing feudal despotism and ignorance and achieving human liberation. Marx and Engels applied dialectical materialism and historical materialism for in-depth analysis of human rights, and gave them profound ideological connotation. Engels pointed out that, "all people, or at least all citizens of a nation, or all members of a society, should be

1. *Works of Marx and Engels*. Vol.1. People's Publishing House, p. 436.
2. *Dictionary of Culture Studies*. Central University of Nationalities Press. 1988, p. 749.
3. Cai Junsheng, et al. *On Culture*. People's Publishing House, 2003, p. 37.

awarded equal political and social status."[1] The modern world has nurtured various theories on human rights. Despite their difference in cultural background, development stages, nationality and religion, ideals and beliefs, those schools of thoughts have reached common grounds in safeguarding and developing human rights. Basically, that is because human rights are a spiritual and conscious phenomenon, and an act of thinking for demonstration of their basic understanding and thoughts through theories.

The second is the institutional connotation. From the very beginning, illustration and advancement of human rights has been conducted on the level of law. Modern thoughts on human rights in the West started from natural law in theoretical elaboration. Based on rational conjecture of natural status, thinkers back then believed that human rights are the basic rights stipulated by natural laws under natural conditions. To meet the needs of social development, people had to sign contracts and accordingly, social management institutes emerged. Although part of their rights had to be transferred, people had the right of self-defense, for fighting against infringement on their basic rights as human beings. From then on, laws became an important instrument in safeguarding human rights. And human rights law has witnessed continuous development together with the development of human rights causes, forming a system of human rights laws and a system of human rights institutions.

The third is the practical cultural connotation. The key to safeguarding and promoting human rights is practice. The practice of human race creating material and spiritual civilizations makes possible advancement and development of society, and their practice in protecting and developing human rights is constantly pushing forward the causes of human rights. From opposition to feudal despotism in the modern era by the bourgeois to the fight for ultimate liberation of human race by the working class, and to the postwar efforts of eliminating trampling on human rights by the international community, human rights are becoming the common cause of the entire human race. Peoples from countries around the world have launched extensive cooperation, bringing the cause of human rights into a new age of cooperation and mutual benefit.

II. The Key to Human Rights Causes is Development

Development is the eternal theme for mankind. In the long run, maintaining and ensuring human rights lies in developing it. Without social development and progress, there would be no human rights. The practice of material production is the source from which mankind obtains material subsistence, the fundamental condition for the survival of mankind, and thus the foundation of overall social life. Marx and Engels said, "We have to determine the first precondition for the human race to survive, i.e., the first condition for all

1. *Selected Works of Marx and Engels*. Vol.3. People's Publishing House, 1955, p. 444.

histories. And that precondition is, to make history, people must have the ability to survive; to survive, they need food, drink, housing, clothing and all other necessities for life."[1] Mao Zedong also believed that "Production activities are the fundamental practice by mankind. They determine all the rest activities."

Human rights are based on material production activities. Its emergence and development are resultant from progress and development in material production activities. At first, from the emergence of human rights, human rights are the outcome of material production and development in society. During late middle ages, large-scale social production became a challenge for production mode under natural economic conditions, calling for liberation of labor from the personal bondage system, and establishment of new productive relations, so as to provide endless human resources for machine-driven industries. Therefore, the campaign against feudal despotism began, in the form of fight for free flow of labor. From the very start, protection of human rights does not only have connotations of civil rights and political rights, but also embodies profound economic content. In addition, seen from the realization of human rights, the social and economic development and progress provide the basic and developing material conditions for the human beings to enjoy basic rights. The entitlement is based on social development. Social development includes not only development of productive force, but also that of productive relationship. Productive force is the most active factor in social development, and the ultimate power determining social development. Its development furnishes the material foundation for mankind to enjoy human rights. Guan Zhong, the philosopher in ancient China, once remarked that "People will learn the etiquette only when their barns are filled with grain, and differentiate honor from dishonor only when they have enough food and clothing." Without sufficient material backup, mere survival will be a problem, not to mention freedom, equality or development.

Thirdly, seen from the development of human rights, the concept of human rights has been incessantly putting forward new contents and requirements with economic and social development. The first major breakthrough in this respect is the extension from traditional civil rights and political rights to social, economic and cultural rights. Development of mankind also affects an individual's rights. As the subject of human rights, the individual's development not only includes physical development, but also mental development. The development of consciousness of a person as one living in a group prompts people to put forward new higher and more complete requirements for rights entitled to them. The promotion of legal awareness gradually provides guarantee for enjoyment of human rights. The development of mankind has made possible advancement to higher levels of rights enjoyed. Therefore, human rights are historical and concrete, and linked to certain social

1. *Selected Works of Marx and Engels*. Vol.1. People's Publishing House, 1955, pp. 78-79.

development, just as Marx once said, "Rights should by no means exceed the economic structure of a society or its cultural development, which is restricted by the former."[1]

"Development is the foundation for progress in human civilization, and the key to solutions for all contradictions and problems facing the world."[2] Development is also "the fundamental approach to promote the well-being of the people and progress of society."[3] It has become a common understanding among international community that advancement of human rights should be based upon development. While drafting the *United Nations Charter* in 1944, people already took development as an important precondition for safeguarding human rights. Delegates from Panama, Chile and Cuba believed that the role of the United Nations is to "promote and protect human rights," with special emphasis on safeguarding social rights and the right to economic development.[4] *The Universal Declaration of Human Rights* is the first international instrument which systematically set forth the specific contents regarding respect for and protection of fundamental human rights. Despite its historical limitations, it has exerted a farreaching influence on the development of the post-war international human rights activities and played a positive role in this respect.[5] The *Declaration* explicitly stipulated economic, social and cultural rights, such as social security, freedom from unemployment, equal pay for equal work, paid holidays, right to education and adequate appropriate standard of living.

The two United Nations Human Rights Convenants ratified in 1966 further linked protection of human rights to development. Later on, the right to development becomes a new concept and field of human rights acknowledged by the international community. In 1969, UN put forward the issue of development in Declaration of Social Progress and Development. The UN General Assembly in 1979 passed Resolution on Right to Development, stipulating that "the right to development is a human right. Equal opportunity for development is not only a privilege for countries around the world, but also a privilege for individuals within their boundaries."

In 1986, the *UN Declaration on the Right to Development* further regulated the basic contents of right to development. From then on, human rights and development become an in-severable whole. The "sustainable development concept" and "comprehensive social

1. *Selected Works of Marx and Engels*. Vol.3. People's Publishing House, 1955, p. 305.

2. Hu Jintao. 2005. *Promote Full Cooperation to Promote Common Development – Speech Delivered at the Unofficial Dialogue Between South-North Leaders*.//Selection of Important CPC and PRC Literatures Since 16th NPC. Vol.1. People's Publishing House, p. 438.

3. Hu Jintao. 2006. *Progress with Time, Carry on the Past and Open a New Way for the Future, to Forge a New Strategic Partnership Between Asia and Africa*.//Selection of Important CPC and PRC Literatures Since 16th NPC. Vol.2. Central Documentary Press. p. 851.

4. See Fang Guangshun. 2000. *Analysis of Contemporary World Human Rights Issues*. Liaoning University Press. p. 289.

5. *Human Rights in China (White Paper)*. Central Documentary Press. 1991: p. 66.

development concept" proposed in the 1970s revealed the internal connection between human rights and development, clarifying that the right to development is the root to human rights protection, and social and economic development is the source for its development. On the basis of fundamental views about development expounded in Marxism, the scientific outlook on development sticks to "people-oriented idea" as its essence, scientifically reveals the connotations and requirements of development in the contemporary world. It emphasizes "striving for people-oriented and coordinated sustainable development in a scientific manner; seeking organic unification of all causes and harmonious development of members of a society; seeking self development via safeguarding world peace, and promoting peaceful development of world peace via self development."[1] This is a scientific summation of socialist development path with Chinese characteristics, as well as a major contribution to and development of safeguarding and developing human rights in the contemporary world.

III. Promoting Diversified Human Rights Development

Diversity furnishes reference and momentum for human rights development in different cultural contexts. The human society is a community of different types of cultures, and diversity is the basic quality of cultures in the world. Diversity is mainly found in particularity of language, thinking mode, and value and belief.

Jiang Zemin pointed out that "The world is diversified. On our planet, there are approximately 200 countries consisting of about one thousand nationalities. Aside from difference in natural environment, they have undergone different social and historic development process, thus forming various social systems, values, life styles, religious beliefs and cultural traditions."[2] While acknowledging diversity, China also emphasizes that the significance of diversity lies in its boost for human development.

The Chinese President Hu Jintao indicated that "The world is diversified and colorful. The diversity in development mode and social system, learning from others' strong points to offset one's weakness and the communication and exchanges between different development modes and social systems are an important impetus for development of the world."[3] This is in stark contrast to American Scholar Huntington's "theory of civilization conflicts," and it restores the status attributable to diversity in the history of human development. The view of "diverse culture as an impetus" earned recognition in the international community. Maurice Portiche, cultural counselor of the French Embassy in China, pointed out that

1. Hu Jintao. *Hold High the Great Banner of Socialism with Chinese Characteristics and Strive for New Victories in Constructing an All-round Well-off Society*. People's Publishing House, 2007, p. 15.
2. Jiang Zemin. *International Situations and Sino-Japan Relations – Speech Delivered on Celebration of 20th Anniversary of Normalization in Sino-Japan Relations. People's Daily* [1992-4-8].
3. Hu Jintao. *Strengthen Friendly Cooperation for a Better Future. People's Daily* [2005-11-18].

"Major contributions from the view proposed by China consist in: before advent of the third millennium, [it] respects other languages and other cultures while affirms those of its own, inaugurating genuine multi-language competence." "The influence of China lies in pushing the world along on the direction of diversification, while faced with pressure from the US."[1]

Diversity is not only the momentum for cultural development, but also impetus for human rights development. The contradiction of human rights lies in the asymmetry between its demand and its reality. On the one hand, the contradiction is pursuit of higher levels of human rights derived from other cultures in the globalization context by subjects from different cultural backgrounds. On the other hand, the contradiction is reflected in referring to human rights development in multiple cultural backgrounds and in promoting scientific development of its own. This sort of campaign not only realizes preset ideals for human rights, but also pushes human rights to different and higher objectives. Aside from being the reality of current human society, diversity is probably the eternality of human development in the future. The eternal diversity will provide inexhaustible moment for development of human rights.

To promote the scientific development of human rights causes on the basis of recognizing and respecting diversity, the international community should give full play to the driving force of diversity for development. Firstly, countries should actively promote their own development. In diversification of world culture, each culture is an important member, and an integral component of civilization diversification. In promoting development of diversity, they should ensure the continuation, succession, perfection and development of their own traditional cultures. Meanwhile, they should be convinced of their choices of human rights and steadfastly develop human rights with their own characteristics. However, the development of culture and human rights will be dependent on that of society and economy. Strengthened economy and heightened comprehensive strength are the material guarantee for cultural succession and human rights development.

Secondly, healthy development of other countries should be fully respected. "Benevolence, lenience and tolerance" should be upheld to form and intensify the consciousness of respecting diversity in choice of human rights. Understand that the choice of each country is based on the level of its historical, political, economic and cultural development. And the equality among them in human rights standards determined according to their concrete situations should be ensured. Human rights are universal, but there are also particularities because of different cultural backgrounds and economic development. Therefore, the mentality of taking one's own standard for human rights as the central standard should be discarded. The status quo of other countries in human rights should be

1. [France] Maurice Portiche. *Cultural Diversity in China and Harmonious World*. Foreign Theoretical Trends, 2010 (7): p. 71.

recognized, so as to seek common grounds while preserving differences and to lend sincere helping hands. In other words, it is inadvisable to determine human rights development in all countries with a single concept, system or law.

Thirdly, the principle of applicable national laws first should be guaranteed while conducting human rights activities. Many international documents on human rights have explicitly pointed out that, the subjects of international human rights laws are sovereign states, and that domestic laws are foremost while exercising human rights legal aid. Article 8 of the *Universal Declaration of Human Rights* regulates that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." The Optional Protocol to the International Covenant on Civil and Political Rights stipulates in Article 2 the basic procedures for international activities of human rights protection: "Individuals who claim that any of their rights enumerated in the covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration."[1]

Fourthly, efforts should be made to build a harmonious world featuring cooperation and mutual benefits. Peace, development and cooperation are prerequisites for constructing a harmonious world, and this is a wish not to be realized by efforts of one single country or several countries. Instead, it will need an international guarantee system for restriction and coordination purposes. The authority of the United Nations and other international organizations should be exercised actively to promote perfection of relevant international conventions on human rights in time, and ensure their role in coordination, balancing and oversight, so as to construct a harmonious world with cooperation and mutual benefits.

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1. See Fang Guangshun. 2000. *Analysis of Contemporary World Human Rights Issues*. Liaoning University Press. p. 303.

Cultural Diversity and Human Rights

Madina Jarbussynova
Kazakhstan

The topic selected for the Conference is undoubtedly of the relevant interest to all the mankind. In any democratic and law-governed state, issues of human rights and freedoms are put into the forefront of modern world view, thus testifying huge transformations in a spiritual culture and morals of members of the international community.

Respect to human rights, universal values and fundamental freedoms is a key factor of progress and secure future for all the states, including Kazakhstan and China, I am sure.

In my statement, I would like to draw attention of the participants of the Conference to the work being carried out to protect and promote human rights by my country Kazakhstan since we gained our independence in 1991.

First of all, the fundamental ground for this process has been provided by the principles enshrined in the primary law of the state – the Constitution, which says that Kazakhstan asserts itself as a democratic, secular, law-based and social state, whose highest values are the man, his life, rights and freedoms that belong to everyone from the moment he is born, that are recognized to be absolute and unalienable, and establishes the contents and the applicability of legal acts.

To ensure the implementation of the basic principles laid in the Constitution, Kazakhstan has undertaken grave steps to introduce and reinforce international standards in the national legislation, including in the sphere of human rights. The concrete measures undertaken to enhance Kazakhstan's legislation are the proof of such consistency. First of all, we have joined the fundamental document in this area, the *Universal Declaration of Human Rights*, which is the first and the main international instrument that systematically provides specific provisions to respect and protect basic human rights and the foundation for the practical implementation of human rights in the world.

In fact, the Declaration has given the start to the universal movement towards recognition of the necessity to respect and protect human rights. In many countries, its principles and norms have become a part of the content of constitutions and national legislations. This is the case for Kazakhstan as well from the first day of its independence. It has been conducting the policy of active integration in the global processes and promotion of human rights and freedoms.

In this case, I would like to note that while alongside with the implementation of the principle of the universality of human rights, the current specific conditions of each state should be taken into consideration. Due to large differences in the social systems, levels of economic development, historic circumstances and cultural traditions in various states, certain mentality and even stereotypes, understanding of the issue of human rights and approaches to practical realization and implementation of those rights is quite diverse as well. Clear examples in case of Kazakhstan are economic reforms carried out in line with the demands of the market economy, necessity to maintain political stability and interethnic accord, establishment and development of the institutes of the civil society.

The Constitution of the Republic of Kazakhstan incorporates in its national legal framework an overwhelming majority of the provisions of the *Universal Declaration of Human Rights* and other primary international sources of rights and freedoms for citizens, while preserving its positive national experience in protection of human rights through promoting ideas of tolerance and peaceful attitude towards each other.

In other words, despite the universality of foundational instruments, while implementing certain international norms and deliberating on human rights, it is important to keep in mind that their base is formed by the fundamental human values, cultural and civilizational variety, which certainly should be respected. Particular difference between these values is noted when we talk about cultures of West and East civilizations. Thus, while creating a legislative base it is necessary to take into account national peculiarities of one or another state.

Along with the *Universal Declaration*, Kazakhstan has signed and ratified seven main multilateral international legal acts that govern diverse aspects of human rights, among which are the *International Covenants on Civil and Political Rights; on Economic, Social and Cultural Rights*; the *International Conventions on the Elimination of All Forms of Racial Discrimination*; the *Conventions on the Elimination of All Forms of Discrimination Against Women*; *on the Rights of the Child; against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment; the Convention on the Status of Refugees. Accession to the Convention on the Rights of Persons with Disabilities* is no less important from the point of view of observing the human rights.

In addition to these documents, Kazakhstan has become a participant of more than 60 multilateral universal international agreements in the sphere of human rights and also accepted the main human rights standards elaborated by the international community. On the assumption of inalienability of human rights, the Republic of Kazakhstan has undertaken the commitment to respect, observe and protect them, thereby defining the parameters of human rights protection approach in the State policy.

Pursuant to these international documents the Republic of Kazakhstan did a lot to harmonize the national legislation and adopted a number of laws regulating human rights and

freedoms. We monitor their observance and protection using both national and international mechanisms. Many provisions have been implemented into the legislation of the Republic of Kazakhstan. The work on further implementation of norms of the ratified agreements in the sphere of human rights in the national legislation is currently under way.

Our state is very serious about implementation of commitments stipulated by the Conventions, which were ratified by Kazakhstan. Efforts recently made by Kazakhstan's governmental bodies and non-governmental organizations in the area of human rights education are becoming more visible and effective; a path of consistent dissemination of information and knowledge about human rights has been selected. This is encouraged by the systematized process of accession of the state to international human rights agreements. Besides, we have established a process of the state's accountability for the commitments undertaken.

Since its independence, Kazakhstan has been consistently doing a lot to protect human rights and freedoms. The independent judicial system has been developed and is being continuously enhanced. The special institutional body for protection of the rights of citizens – the Ombudsman – has been established. His work complements existing state human rights protecting mechanisms. In particular, the Ombudsman is an official institution whose responsibility is to protect rights of individuals against unjust actions from state agencies, judicial instances, officials, etc and to prevent abuses. According to his mandate, the Ombudsman is a kind of people's lawyer, protecting a particular person whose rights are violated.

In the period since its existence, the Ombudsman institution has found its place in the legal system of the state, and has been known both to public authorities, civil society and to the citizens. For a number of public agencies, government, structural subdivisions of the Presidential Administration, the Ombudsman institution is an advisory body in the sphere of human rights and freedoms. In general, the Ombudsman successfully complements the existing state instruments for protection of human and individual rights and freedoms, provides additional guarantees for an individual as well as demonstrates a simpler, faster, more flexible and less order as opposed to other protective instruments. In this regard, it should be noted that the Ombudsman executes a double tasks: the firs – protection of citizens from abuses of state agencies and the second – support and thereby improvement of the work of these state agencies.

Also, the Commission on human rights under the President of the Republic of Kazakhstan, which is a consultative and advisory body, effectively functions alongside with the Office of the Ombudsman. It aims towards forming a policy of the Head of State in the sphere of human rights and assists in implementation of his constitutional powers as a guarantor of protection of the rights of citizens.

On the whole, naturally complementing each other in the legal field of Kazakhstan, the Commission and the Ombudsman make a great contribution to the sphere of protection of human rights.

Meanwhile, state protection of human rights does not exclude independent actions of each person on their protection by all means not prohibited by the Law, including the possibility to turn to the international agencies such as the UN Council on Human Rights, the UN Committee against Torture, the UN Committee on the Elimination of Racial Discrimination, the UN Committee on the Elimination of Discrimination against Women.

Great importance in the country is also attached to training of officials to human rights. Standards of public service in Kazakhstan are based on the principles of human rights protection. Ideas of human rights enshrined in human rights conventions, were incorporated not only in the texts of laws, but also in subordinate regulatory legislation and instructions.

In general, the modern Kazakh society develops in the direction of acknowledging the value of each individual, recognition and protection of its dignity, approving the idea of inherent and inalienable human rights and freedoms. The Constitution of the Republic of Kazakhstan safeguards system for achieving this rather complex and important target.

Among the latest serious improvements in the sphere of democratization and human rights, I would like to mention amendments and additions to the Constitution of Kazakhstan introduced in 2007, aimed at further strengthening of legislative power, development of local self-government, handover of the arrest approval issues from the prosecutor's office to courts, and considerable narrowing of the sphere of use of death penalty.

Also I would like to note that one of the factors of promotion of human rights in the state is the level of activity of civil society, various organizations, including those which are active in human rights sphere. They are perceived as an indicator of openness of the state to new reforms. Therefore, Kazakhstan attaches great importance to the development of its civil society and to the establishment of the constructive dialogue with it.

Currently, within the framework of the given cooperation and for the purpose of realization of the main directions of the legal policy in the country, two essential documents – *the National Action Plan for 2009-2012* and *the Concept of Legal Policy of the Republic of Kazakhstan for 2010-2020* were approved.

We are firmly convinced that these documents are necessary to pursue more effective, coherent and coordinated policy in the sphere of human rights with the involvement of state agencies, NGOs and international organizations.

All this is an indication that Kazakhstan is configured on further development of legal frameworks and their consistent harmonization with the international standards in the sphere of human rights. Nowadays, given the provisions of *the National Plan* and *the Concept of Legal Policy*, appropriate amendments and additions are introduced into the national

legislations and new legal acts are being adopted. For example, *the Laws of the Republic of Kazakhstan on Equal Rights and Equal Opportunities of Men and Women, Prevention of Domestic Violence, on Improvement of Forensic-Expert Activity, on Strengthening the Fight against Corruption, on Social Support of Certain Categories of Citizens, on Refugees, and also on the Issues of Further Improvement of the System of Execution of the Criminal Offences and Correctional Systems*, etc. are aimed at strengthening national human rights protection system.

On the whole, the process of democratic development in Kazakhstan is carried out both through improved legislation and law enforcement practices and through activities aimed at increasing legal literacy of the population and motivation for its active participation in the political life of the state.

Elaboration of these documents is a result of effective cooperation between the state agencies, non-governmental organizations, national and international experts.

Besides, cooperation of the state agencies and the NGOs is also carried out within the framework of the national dialogue platform – the Civil Forum, which is held twice a year. At the given forum the two sides openly discuss various state problems and set tasks on their joint settlement cooperation.

The non-governmental sector is one of the most dynamically developing sectors in the Republic, and in many respects it is a result of the goal-oriented state policy on its support.

The basis for promotion of common interests and cooperation between the state and the non-commercial sector is the Concept of the development of civil society in the Republic of Kazakhstan for 2006-2011, which was elaborated with the most direct and active participation of representatives of NGOs.

I would also like to bring your attention to the information that this year Kazakhstan has successfully passed through a procedure of the first national report within the framework of the *Universal Periodic Review* (UPR) in the UN Council on Human Rights.

Many delegations which participated during the interactive dialogue (54 states) noted the progress achieved by Kazakhstan in the sphere of protection and promotion of human rights.

In particular, a high estimate was given to the policy on promotion of interethnic and interreligious harmony, concrete steps undertaken to improve the situation of women and children, and the intention of further enhancement of the legal system, which is paramount at this time.

Also I would like to attract your attention to the fact that given the progressive development of the process of democratization in Kazakhstan, as you know, this year Kazakhstan has been chairing in the OSCE (Organization for Security and Cooperation in Europe). During the Chairmanship, we have put forward three main priorities in the

human dimension, directly related to the promotion of human rights in the OSCE area of responsibility.

In particular, with a very positive experience on provision of interethnic and interreligious harmony in own country, we have proclaimed the issues of tolerance and intercultural dialogue to be the top priority of the Chairmanship. So, on June 29-30 the OSCE High-Level Conference on Tolerance and Nondiscrimination was held in Astana, which was aimed at a worthy contribution to the process of further strengthening of cooperation between different cultures and civilizations, practical implementation of previous decisions.

One of the priorities put forward by Kazakhstan is further promotion of gender balance, including empowerment of women, increasing their participation in social and political life. The other no less pressing problem is human trafficking with a separate focus on child trafficking, which gained global scale and has become a part of transnational crime.

All these priority directions in the sphere of protection of human rights belong to those spheres of activities, which require special attention of the OSCE participating states, including Kazakhstan.

In conclusion, I would like to note that any state is obliged to protect human rights and freedoms of an individual since his or her birth till death, and even after death irrespective of the social status, availability or absence of citizenship and other factors.

I hope that this Conference will help us to reflect further on existing problems, as well as allow us to share positive experience and outline ways to further promote human and citizen rights in our states.

(The author is Ambassador-at-Large, Ministry of Foreign Affairs of Kazakhstan.)

Cultural Diversity and Human Rights: Study on Culture and Human Rights from Cooperative Perspective

Jiao Jinmiao
China

Culture refers to the ideologies, concepts, practices, custom, representative personnel formed by a group (country, nation, enterprise or family) during a specific period of time, and all the activities originated from the overall consciousness of the group. Culture is the ideological soul and spiritual pillar of a nation's existence and development, the banner and orientation of social development, and the important element of the core competitiveness of a country and region. Advanced culture is the back bone, spirit and engine leading the economic development, social progress and people's advance.

I

Culture has the characteristic of diversity. In the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* adopted by UNESCO, "Cultural diversity" is defined as the manifold ways in which the cultures of groups and societies find expression. The *Universal Declaration on Cultural Diversity* points out that: "Culture takes diverse forms across time and space;" "As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature." Cultural diversity can be found in various aspects such as languages, religious beliefs, ideological theories, literatures and art, civil buildings and folk custom. Cultural diversity is the regular expression of the world history development, the basic characteristics of human society as well as the important impetus of human civilization progress.

Cooperative culture is the specific embodiment of cultural diversity. Cooperatives are the combinations of disadvantageous groups and the necessary result of the development of market economy. So long as there is development of market economy, disadvantageous industries and disadvantageous groups, there are cooperatives representing interests of disadvantageous groups and serving disadvantageous industries. Cooperative has been prosperous in the past more than 160 years after its emergence with solid ideological foundation and cultural accumulation. So far, cooperative development has covered more than 160 countries and regions worldwide with nearly 800 million member households.

Cooperative culture is the specific embodiment of cultural diversity in cooperative economic development. Under the new situation, cooperative system has energetic vitality and abundant cultural contents.

II

Connotation of cooperative culture. Cooperative culture refers to the core concepts of the cooperative organizations and the assembly of elements such as the consciousness, ethics and spirits that can reflect the core concepts.

Viewing from the ideological realm, cooperative culture mainly includes specific contents in four aspects[1]. Democracy consciousness: Democracy is the basic characteristic of a cooperative, as well as its core principle. **Human rights consciousness:** The basis of cooperative culture is humanism, which insists personality liberation and development and freedom. Humanism is a kind of world outlook based on the principle of respecting, caring about and focusing on human. **Cooperation consciousness:** Conflict, competition and cooperation are three different human activities. The common grounds of the three kind of human activities are: one person's activity will stimulate the action and enthusiasm of another to a higher level. In cooperation, conflict and competition are parallel and of mutual-assistance. **Collectivism spirit:** Cooperatives are the groups consisting of people with common demands (including economic and social demands) who help themselves in collective manner. Cooperatives encourage the moral principles such as unity, mutual-assistance, honesty, transparency, social responsibility and collectivism that care about others.

Viewing from the contents, cooperative culture mainly consists of three aspects of spiritual culture, institutional culture and material culture[2]. Spiritual culture is the core of cooperative culture. It is collectively reflected by the cooperative motto of "one for all, all for one." It is the spiritual pillar and important condition for the existence and development of cooperative economic organizations. Institutional culture is the pillar of cooperative culture. The reason that cooperatives can maintain sustainable development is the succession and innovation of institutional construction. The institutional construction of cooperative economic organizations is the embodiment of the scientific research wisdom of their members, reflecting high-level democracy. Material culture is the symbol of cooperative culture, as well as the external expression of it, mainly consisting of the products, services, production and operation environment design, workplaces, brands, advertisements, packages,

1. *Carrying Forward Cooperative Culture and Expanding Cooperative Cause in the New Era with Innovative Ideology*, December 4, 2008, *Nongbo Caijing.*

2. Qi Runge, *Developing Cooperative Economy in Constructing and Promoting Cooperative Culture*, December 10, 2009.

designs, office facilities, clothing of staff, emblems, banners and major tones and so on.

Viewing from the basic characteristic, cooperative culture consists of five parts.[31] **Voluntary participation and self-help:** It is the primary characteristic of cooperative culture. Voluntary participation means that all affairs related to a cooperative should be based on people's willingness and requirements with no legal compulsoriness or administrative interference. These affairs should not be taken over by the government. Self-help refers to self-management, self-service, enjoying their own benefits and shouldering their own risks. All the operational activities related to a cooperative economic organization should be collectively decided and implemented by its members. Equality and justice are the important characteristics differing cooperative economic organizations from other economic organizations, especially modern corporate system. The internal structure of a cooperative economic organization features combination of capital and labor. Regardless of the investment share of a member, he or she has only one vote in decision-making activities related to the organization. Democracy is the core content of cooperative culture. Based on the principle, all the leaders of a cooperative economic organization should be democratically elected and all the internal and external affairs related to a cooperative economic organization should undergo democratic participation. A cooperative economic organization is the combination of disadvantageous groups. It should run under human-based principle and give priority to social care with extensive social participation. It should promote sustainable development of the community where it is located through adopting the policies approved by its members. Providing service is the important characteristic of a cooperative economic organization. A cooperative organization should serve the society and its member with non-profit goals.

Advanced nature of cooperative culture: The key element for cooperative to showcase its strong vitality is its cooperative concepts and values, and the unique cultural connotation formed by the concepts and values.

In 1844, the first cooperative of real modern sense appeared in Rochdale of the United Kingdom – Rochdale Society of Equitable Pioneers. Its charter reflected comparatively complete principle of organization, operation and management. We can say, from the very day when the cooperative was established, the organization reflects progress of human civilization. The cooperative theory consists of a large amount of human wisdom and cultural crystallization. The consciousness of democracy, human rights and cooperation and collectivism give off the glory of the age. Cooperative culture is an important ingredient of socialistic advanced culture. Viewing from the layer of cultural value or from temporal spirit of culture, cooperative culture is the advanced, civilized, harmonious and excellent culture

1. Qi Runge, *Developing Cooperative Economy in Constructing and Promoting Cooperative Culture*, December 10, 2009.

that meets the need of the developing times.

III

Connotation of cooperative culture in China: In terms of connotation, China's cooperative culture includes contents such as Marxism and Leninism, Mao Zedong Thought, Deng Xiaoping Theory and other important theories, and Scientific Outlook on Development. It also includes specific connotation, e.g., the values system, operation and management measures, all-dimensional incentive measures, internal cohesion, protocol construction and images of cooperatives.

Attribute of Cooperative Culture in China[1]**:** In China, the cultural attribute of cooperative economy in the new age is "loving cooperation, serving agriculture, farmers and the countryside, win-win cooperation and innovational development." **Loving cooperation** is the most essential requirement of cooperative cause to its personnel, as well as the common cultural development concept. **Serving agriculture, farmers and the countryside** is the foundation and value pursuance of cooperatives. Rooted in the countryside, cooperatives should focus on rural areas and serve farmers. Linked by cooperative system, the cooperatives have the fundamental tenets and historical missions of actively participating in and promoting the development of agriculture industrialization, accelerating modernization of commodity circulation in rural areas and promoting farmers to increase their harvests and income. **Win-win cooperation** is the core of cooperative cause and culture. Cooperative economy is the advanced cultural concept of human development; cooperatives cannot do without farmers and farmers need cooperatives more; only when cooperatives sincerely help farmers develop can farmers earnestly work together with cooperatives. Only by doing this can cooperatives and farmers have joint development. Only when the cooperation and communication are strengthened among enterprises and between upper and lower levels of the whole system, can the advantages of common development be brought into full play. **Innovational development** is the soul of cooperative culture. Innovation is the fundamental channel to improve the core competitiveness of cooperatives; only through following the era progress, facing the future, constantly launching comprehensive innovation in institution, management, operation and culture can cooperatives build their cooperative brands and realize scientific, innovative and leaping development.

Characteristics of cooperative culture in China: Currently, China's cooperative cause and culture, represented by supply and marketing cooperatives, are in a process of accelerated development. First, cooperative culture is the important connotation of socialistic

1. Opinions of Supply and Marketing Cooperative of Chongqing Municipality on Deepening the Study and Implementation of the Decision on Promoting Great Cultural Development and Prosperity of the Fifth Plenary Session of the Third CPC Chongqing Municipal Committee (Yugongdangfa (2009) No.26)

market economy culture. Cooperatives develop together and are interdependent with market economy, and have become the important form of socialistic market economy. The formation and development of cooperative culture in China have profound connotation and extension, and cooperative culture is the important connotation of socialistic market economy culture. Supply and marketing cooperative is China's largest cooperative economic organization and is the result of combining the cooperative theory and China's reality, which has accumulated abundant cooperative culture during its long-term practices of reform and development. Second, cooperative culture is an important ingredient of the socialistic core value system of China. As the soul of cooperatives, cooperative culture permeates the whole process of economic activities and management of cooperatives. Excellent cooperative culture can create harmonious and progressive cooperative atmosphere and generate continuous impetus, which can greatly promote reform and development of cooperatives.

The development history of cooperatives[1] shows that in a small town of the United Kingdom of Rochdale in 1844, 28 industrial workers burst out the primitive idea of cooperative operation. In 1928, Chairman Mao led the Fourth Red Army to launch Jinggangshan Marketing Cooperative, giving play to the cooperation economic force of the unity of farmers and workers. The above examples witnessed the cross-century and cross-boundary development of cooperatives.

Entering the 21st century, All China Federation of Supply and Marketing Cooperatives put forward the development strategy of "vitalizing cooperatives with culture." The Outline of the 11th Five-Year Plan on the Development and Reform of Supply and Marketing Cooperatives clearly stipulates that: "Efforts should be made to maintain breakthroughs in constructing cooperative culture system led by the construction of socialist core value system." It will surely exert profound influence to the development of China's supply and marketing cooperatives, and even China's cooperative economy.

Construction of China's cooperative culture: Cooperative culture construction is a long-term, arduous and complicated task. First, China should pragmatically strengthen education on common ideals and convictions. The construction of socialism core values system should be regarded as the fundamental and core project and should be placed in the first place in cooperative culture construction so as to implement it to various aspects of culture construction and development. Second, efforts should be made to explore, foster and shape the cooperative culture that can keep pace with the times, stimulate the senses of mission and responsibility of leaders and staff members through establishing common values and goals, mobilize the activeness and creation spirit of leaders and staff members, collect the wisdoms and forces to the overall goals of cooperative cause, and unify individual

1. *Helping to Promote Cooperative Culture and Making Efforts to Establish the Soft Power of Supply and Marketing Cooperatives*, April 23, 2010, Ganzhou Municipal Supply and Marketing Cooperative.

actions to the common orientation of the cause so as to form the strong joint efforts of scientific, innovative and leaping development for cooperatives. Third, China should make efforts to foster and establish culture development outlook and concept with cooperative characteristics. Efforts should be made to guide leaders and staff members to establish socialist core values and the competition concept of seizing every minute, advancing with the times and keeping exploration and innovation; enhance the concepts of innovation, service, management and clean governance; and explore, establish, foster and initiate the concepts of "loving cooperatives, serving agriculture, farmers and countryside, win-win cooperation and innovational development," "making progress with gratitude for better performance," and "scientific development starting from me," so as to provide strong spiritual impetus and ideological guarantee for the reform, development and stability of cooperatives with the common ideals and convictions. Fourth, China should make energetic efforts to carry forward the entrepreneurship of working hard and perseveringly and fulfilling duties and responsibilities, with due diligence. The history of cooperatives is an entrepreneurship history of hard struggle with the fine traditions of the precious cooperative people that regarded cooperatives as their homes and being hardworking and thrifty. In the new situations, we should fully explore the spiritual connotation of cooperative people of hard struggle and being devoted and promote the hardworking spirit of the new age and the dedication spirit of loving and being professional on the job one takes up.

IV

Cultural diversity and human rights: Human rights[1] refer to the rights of individuals and groups in social relations. Human rights symbolize permanence of human value. According to a declaration jointly issued by several independent experts on human rights of the United Nations, defending cultural diversity is closely related to respecting individual rights and dignities. Only in a social context where the fundamental freedoms and human rights can be protected, can cultural diversity maintain flourishing development. Ensuring people's right to freedom from discrimination of any kind and the freedom of speech, information and correspondence is of vital importance to cultural development. The declaration points out that cultural diversity cannot be used as excuse of harming human rights or restricting its scope, or used to support secession or harmful traditional practices. The universal value of human rights should serve cultural diversity and bridge the communication of different cultures instead of succumbing to any social, cultural and religious standards.

Cooperative culture and human rights: The foundation of cooperative culture is

1. *Cultural Diversity and Human Rights Development in Asia*, China Thesis Download Center, June 7, 2009.

humanism. Calling for personality liberation and freedom and encouraging personality development, humanism is a human-based world outlook that initiates respecting and caring for human. The cooperative is an organization and institution that is gradually formed and developed based on such culture and spirit. In this sense, cooperative organizations are natural to have human rights consciousness.

Human rights practices of cooperatives[1]**:** In human rights practices, cooperatives promote harmony of society and mankind. The international community highly appreciates the role of cooperatives worldwide in promoting human harmony. The International Day of Cooperatives 2004 set its theme as "Cooperatives for Fair Globalization: Creating Opportunities for All." When it comes to 2006, the theme was "Peace-Building through Cooperatives." In human rights practices, cooperatives stress on human-based concept and unity of human beings. The goal of organizing cooperatives is to help meet the economic and social demands of their members; and the essence of cooperative system is the unity and cooperation system for laborers. In this sense, the principles of cooperatives conform to the basic spirit of sustainable development of human race and are in line with the spirit of Scientific Outlook on Development stressed by Chinese Government. In human rights practices, cooperatives play important roles in shouldering social responsibilities. To a large extent, cooperative movement is the pioneer of fulfilling and practicing corporate social responsibilities. The theme of the International Day of Cooperatives 2002 was "Society and Cooperatives: Concerns of Community;" this year, the theme was "Cooperative Values and Principles for Corporate Social Responsibility," which eulogizes that the cooperative people worldwide has made and will continue to make contribution to help cooperatives become responsible corporate citizens. Cooperatives have become the important service suppliers of local communities.

Human rights practices of cooperatives in China: The establishment of socialist system in China provides the basic social system and guarantee for people across the country to constantly improve human rights situations on the basis of equally enjoying economic development and labor fruits. Practices show that we should stick to the road of socialism with Chinese characteristics and the road of human rights development with Chinese characteristics and emphasize respecting diversity of civilization and human rights development.

The state pays more attention to the guiding roles of supply and marketing cooperatives in the development of cooperative economy and culture and human rights protection. China's largest cooperative economic organization, supply and marketing

1. Zhou Lianyun, *Contemporary Connotation and Spirit of Cooperative Culture*, June 23, 2008, Beijing Business Management College.

cooperatives are the important forces of serving agriculture and promoting economic development and social progress in rural areas. Accelerating reforms and development of supply and marketing cooperatives is of great significance in activating circulation in rural areas, improving commodity circulation system, constructing modern agriculture, increasing demands in rural areas, promoting the construction of a new socialist countryside and encouraging the new pattern of integrating urban-rural economic and social development. After several years' reforms and development, supply and marketing cooperatives are changing from their traditional operation mode to modern circulation mode, from the sole supply-marketing business to comprehensive operational service and from sole supply-marketing cooperation to multi-area all-around cooperation. These supply and marketing cooperatives have successfully turned losses into profits with prominent increase of development vitality, great increase of economic strength and obvious improvement of service capacity, making important contributions to promoting agricultural development, increasing farmers' income and promoting prosperity in rural areas. In 2009, the State Council specially issued *Several Opinions of the State Council on Accelerating Reforms and Development of Supply and Marketing Cooperatives (Guofa (2009) No.40)*, further clarifying the reform and development orientation of supply and marketing cooperatives in the new era and making greater contributions to promoting prosperity and development of agriculture and the countryside through unifying ideological recognition and accelerating development paces.

The state pays more attention to the boosting role of peasantry specialty cooperatives in the development of cooperative economy and culture and human rights protection. The peasantry specialty cooperative is the result of mass farmers' active exploration and great creation, an effective path for stabilizing and improving basic operation system in rural areas, an important bearer of promoting innovation of agricultural operation system and mechanisms and increasing organizational level of agricultural production and farmers' access to the market, and the basic force of constructing the service system of new type of agricultural socialization. In order to give full play to the boosting role of peasantry specialty cooperatives in the development of cooperative economy and culture and human rights protection, China issued *Law of the People's Republic of China on Peasantry Specialty Cooperatives* on July 1, 2007 to ensure farmers' principal market status. The law highlights farmers' principal status and their democratic management rights of cooperatives. According to the law, the proportion of farmer members should be no less than 80 percent and all the members are on equal footing with the basic decision-making system of one member one vote. All these stipulations full protect farmer members' property rights and democratic rights in cooperatives.

V

Cooperative culture is the specific embodiment of cultural diversity. China's cooperative culture is the important connotation of the socialism market economy and culture, as well as the important ingredient of the socialism core value system. In the new age, the state will pay more attention to the guiding role of supply and marketing cooperatives in the development of cooperative economy and culture and human rights protection, and the boosting role of peasantry specialty cooperatives in the development of cooperative economy and culture and human rights protection. The reality of China's cooperative culture and human rights practices further prove the theoretical judgment respecting and protecting cultural diversity conform to respecting and protecting human rights.

(The author is Director of the Council of Henan Supply and Marketing Cooperative.)

Ensure Peaceful Settlement and Content Work to Realize Human Rights, Encourage Cultural Diversity to Promote Harmony

Leong Wa
Macau, China

Honored guests, ladies and gentlemen,

It's an honor to be invited to this forum. I hope this forum will be an opportunity for me to exchange my views on human rights with friends from various countries and regions.

Cultural diversity and human rights development is a meaningful topic. We Chinese advocate "harmonious yet different." Like music, different notes combine in accordance with rhythm to form pleasant and sweet tunes. So does the development of human civilization. Different cultures contribute to the diversity in human civilization while representing the difference in customs and values between populations. Each individual is the actor and incarnation of a certain culture. Respect for differences between individuals, cultures, and the rights to life and development of populations under different cultures is a prerequisite for protecting and developing the fruits of human civilization, as well as an important result and symbol of respecting and protecting human rights.

I am from the industrial and business circle. I believe that the basic definition of human rights can be boiled down to a Chinese idiom "Peaceful Settlement and Content Work." "Peaceful settlement" means fixed housing, and sufficient clothing and food. This represents the right to survival. "Content work" means fruitful career and spiritual satisfaction. This reflects the right to development. The progress of right to survival and to development is major contents of progress in human civilization. The continuation of cultural diversity has a precondition, that is, the safeguard of fundamental human rights. Cultural diversity would be nothing but words on the paper if fundamental human rights were not protected.

Now, Macau is a city of peaceful settlement and content work. As one of time-honored cities integrating Chinese and Western cultures, the charm of Macau lies not only in dazzling cityscape and unvarnished human relationship, but also in the connotative cultural diversity, harmonious coexistence of different populations, as well as the progress in human rights cause.

I would like to avail myself of this opportunity to introduce the achievements made by Macau in maintaining cultural diversity and protecting human rights. Comments are welcome.

Macau boasts a typical multi-population, multi-culture and multi-religion society. Among residents in Macau, there are descendants of people from Chinese mainland, and immigrants from Portugal, Britain, Spain and East-Asian countries. Among them, there are less than 10,000 aboriginal Portuguese and most of them boast Chinese ancestry. They have lived in Macau for generations, and formed a special population. The people of one place invariably carry its characteristics. Macau has become the common homestead for various nationalities and populations.

Different populations have brought with them different languages, religious believes and customs.

Before returning to the motherland, Macau takes Portuguese as its official language, while the prevailing language in the public is Cantonese. It is very common to see Portugal names with Chinese characteristics, as well as westernized Chinese names. After its return, mandarin quickly gets popularized, and become the official language together with Portuguese. However, the extensively used languages include mandarin, Portuguese, English and Cantonese.

The diversity of religion and architecture in Macau is also very representative. Cultures of Matsu, Guan Yu, Buddhism, Catholicism, Christianity, Islamism and other religions are kept intact. Western churches and Chinese temples vie with each other, and Chinese-style and Western-style buildings stand shoulder to shoulder, creating the unique landscape in Macau. In 2005, historic urban area of Macau with 25 Chinese and Western architectures was included into the list of world cultural heritage, testifying recognition by international community of Macau's protection of cultural diversity.

In Macau, different folk customs coexist and each respects the other. In Macau, the birthdays of Jesus and Buddha are celebrated as public festivals; there are marriages across nationalities and populations, Western-style and Chinese-style wedding ceremonies, and Chinese clothing and Western robes. Each custom blends with and respects the other.

Over the decade after its return to the motherland, The Government of Macau Special Administration Region has abided by the "Basic Laws," implemented the fundamental principles of "one country two systems" and "governance of Macau by people from Macau," and formulated a series of laws and regulations, and relevant policies, with the generous support of the Central Government, to develop economy, improve people's livelihood, and safeguard social harmony and stability, making it possible for the human rights cause in Macau to attain considerable progress. Over the decade, Macau has obtained outstanding achievements in economic development, further safeguarding the welfare of the public. Now, residents of Macau are entitled to free education and benefits of medical security system. In addition, the SAR government has also implemented cash dividend allocation program, greatly improving the living conditions of its people. Governance of Macau by

people from Macau does not mean governance of Macau by people of Chinese nationality only. Aboriginal Portuguese and overseas immigrants also take part in management and construction of Macau. In the administrative agencies of Macau SAR, the percentage of aboriginal Portuguese and overseas immigrants has exceeded 40%.

Over the decade, the cultural diversity of Macau has been further recognized and protected. The SAR government appropriates large sums of money each year for maintenance and renovation of religious facilities, protection of material and intangible cultural heritages, and sponsor of cultural exchanges by cultural organizations and NGOs. The inclusion of "Macau historic urban area" into world cultural heritage list has greatly strengthened the recognition and sense of belonging of Macau people for cultural diversity.

The harmonious and stable social situations of Macau has demonstrated that since its return to the motherland, its cultural diversity has been respected and human rights sufficiently protected, and that different cultures and religions have integrated, while maintaining and handing down their sustaining essences.

I believe that maintenance of cultural diversity and safeguard of human rights are mutually dependent and supplementary. Respect and protection of human rights is the foundation for development of cultural diversity, and the requirement of harmony among diverse cultures. Likewise, only when diverse cultures are respected and developed, and beliefs, languages and customs of different nationalities and populations are respected can we truly respect and protect human rights. The harmonious and stable development of Macau is an ample proof.

Thank you.

(The author is Deputy Director of Historical Data and Study Committee of CPPCC,
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Cultural Diversity and Human Rights: A Case Study of Female Genital Mutilation/Cutting/Circumcision in Kenya

Winfred Osimbo Lichuma
Kenya

What is FGM/C?

Female Genital Cutting/Mutilation according to WHO comprises all procedures that involve partial or total removal of all external female genitalia or other injury to the female genital organs for non-medical reasons. The practice is usually carried out by traditional circumcisers. Increasingly the procedure is now being undertaken by health care providers.[1]

Accordingly FGM is classified into four major types namely clitoridectomy or the partial removal of the clitoris, or the excision or the partial removal of clitoris and the labia minora, with or without excision of the labia majora, or the infibulations which is the narrowing of the vagina opening through the creation of a covering seal formed by cutting and repositioning the inner or outer labia with or without removal of clitoris or other described as harmful procedures to the female genitalia for non-medical purposes e.g. picking, piercing, incising, scraping and cauterizing the genital area.[2]

FGM is mainly practiced in parts of Africa, Asia and in some Arab countries.[3] Due to reasons of immigration, the practice of FGM has become more prevalent in Europe and North America.[4] In Africa Kenya have some communities that practice it. As per the records of the 2003 Kenya Demographic Health Survey, the North Eastern province of Kenya has about 99%, the largest proportion of women circumcised. In a GTZ Kenya study report publication on FGM in Kenya, it is noted that the practice is almost universal among the Somali (97%), Kissi (96%), Kuria (96%) and Maasai (93%). It is also common among Taitas (62%), Kalenjin (48%), Embu (44%) and Meru (42%). The most common reasons for the persistence of the practice among some communities is the need to observe customs and traditions, the attempt to improve the marriage prospects of women and to curb women's sexual desire and the need to pass from childhood to womanhood.

1. WHO website.
2. See www.who.int/mediacentre/factsheets/fs241/en/print.html accessed on 18th August 2010.
3. See UNFPA website at www.unfpa.org/gender/practices2.htm accessed on 14/08/2010.
4. Jacqueline Castledine article on FGM an issue of Cultural Relativism or Human Rights at www.mtholyoke.edu/acad/intre/jc.htm.

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Among communities that practice FGM/C, they are offended to call it female genital cutting or mutilation (FGC/FGM). They prefer to call it circumcision almost equating it to the male circumcision. A report by the family planning Association of Kenya notes that these communities believe that female circumcision of girls make them feel grown up and they have no desire to have sexual relations with adult men before marriage. It is also viewed as an initiation into adulthood. Girls are considered as adults after undergoing the initiation. The communities universally agree that the practice is beneficial to the girls. It is also strongly held that ancestors would curse those girls and their families that failed to undergo the procedure. Mothers and grandmothers are the most influential persons in ensuring that their daughters have undergone the procedures. It is considered the pride of the family for the girls to be married while still virgins and keeping to the marital fidelity. Within these communities, uncircumcised girls are rejected and are unlikely to find men to marry them and when they do, they fetch very low bride price or get married to old men. Girls who are not circumcised are considered to be violators of cultural practices and are discriminated and ostracized. Girls are often told that if they do not undergo the procedure, they will have difficulties during child birth. However, the report does indicate that in areas where female circumcision is practiced, teachers reported higher drop out rate of girls from school to go and get married. In another report by the U.S. Department of State on FGM, supporters of the practice see it as integral to a girl's maturation because the ritual includes instructions about sexuality, relations with husbands, pregnancy, behavior and the importance of marrying outside the clan. Girls receive formal instructions in all the named issues.

Cultural Diversity and Human Rights

The notion of cultural rights is very Complex.[1] Article 27 of the *Universal Declaration on Human Rights* and Article 15 of the *Covenant on Economic and Social Rights* provides for the element of Cultural rights as below:

Art. 27 (1) of UDHR: Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Art. 15 of CESCR-state Parties recognize the right of everyone

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its application.

On the other hand, the *Vienna Declaration and the Programme of Action*, adopted by the World Conference on Human Rights on 25th June 1993 stated[2]:

"All human Rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner,

1. Asbjorn Eide and others (ed) on Economic Social and Cultural Rights at page 18.
2. See www.unhchr.ch/huridoca.nsf/(symbol)/a.conf.157.23.en.

on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

It further affirms that:

"Gender based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved through by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care and social support."

Considering the importance of the promotion and protection of the rights of persons belonging to minorities and the contribution of such promotion and protection to the political and social stability of the states in which such persons live, the World conference reaffirmed the obligation of states to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the *Declaration on the Rights of persons* belonging to National or Ethnic, religious and linguistic Minorities and that such persons have the right to:

"Enjoy their own culture, to profess and practice their own religion and to use their own language in private and public freely and without interference or any form of discrimination."

The protection of minorities fits in very well with the opening remarks of the UDHR that states:

"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."[1]

The question therefore for consideration is how do the above human rights statements fit in with the recognition of minorities' cultural practices like FGM practice in Kenya discussed above? Who sets the perimeters to consider whether a cultural practice should be considered harmful and therefore that it violates human rights? Could it be right to agree with theories that suggest that declaration of minority cultural practices as a violation of human right is a western theory that violates the minorities' rights to culture and cultural practices? Should country laws limit category of practice of a social group like FGM in the name of protection of human rights?

1. Art. 1 of the UDHR.

Reconciling Cultural Diversity and Human Rights

Globalization has raised the issue of cultural diversity to a new level. Cultural-ethnic and religious communities have become acutely aware of the threat to their identities by engulfing, mainly western driven, economic globalization.[1] Some scholars have held that the natural law that has shaped the international law is based on secular views of society understanding of sovereignty based on the European monarch that was inherited by the post-colonial states in Africa.[2]

There is an emerging consensus that people's cultural diversity must be respected. This is evident in the Universal Declaration on Cultural Diversity adopted by UNESCO in 2001. In article 4 of the declaration, the defense of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law or to limit their scope.

The call of recognition of cultural diversity and the universality of human rights requires rethinking and reconciliation. If communities enjoy a cultural practice such as FGM/C as a source of their identity and a sense of belonging, should human rights at both international level and regional level outlaw the practice in favour of the majority beliefs? Does this cause conflict and tension within the community that sees the cultural practice as a sense of belonging?

FGM/C, Cultural Relativism and human Rights

Is the practice of FGM an issue of cultural relativism or an issue of violation of human rights?

According to the communities that practice it, FGM/C is their cultural practice and it is based on their cultural values, norms and beliefs and it is morally considered to be fine. Cultural relativists hold that the fact that another community or person hold that practice to be unethical does not necessarily render it so. They further say that since FGC is part of the culture of the community that practice it, it is okey and other people must accept it as it is. But Jenifer Scot asks in her article titled Eliminating Female Genital Mutilation[3] that should the whole world adopt cultural ethical relativism? She finds the response in the negative.

In my view while the international community has set perimeters for respect of every community's culture, I firmly hold that the practice of female genital mutilation/cutting or

1. A paper by Pro. Dani Wadada Nabudere on Human Rights and Cultural Diversity for the Association of Law Reform Agencies of Eastern and Southern Africa at a conference in 2005.
2. Abine, G.H & Thorson, T.L (1973): *A history of Political Theory*, Oxford Press, Oxford at P390-394.
3. See article at web.viu.ca/clemotteo/Pandora/Ethics%20230/eliminating_female_genital_muti.htm.

circumcision, whatever name may be used to call it, is a violation of women's human rights. The following reasons advance this argument.

Firstly the weapons used to perform the operation are crude and in most cases unsterilized. In this era of high rate of HIV transmission, the girls' life is endangered. The procedure itself is very painful, always performed by old women who are professional circumcisers. Stories are given where the circumciser is assisted by two or three other women who hold the girl for the cut to be done. In most cases, the girls' consents are never obtained. In some cases some girls know what the custom involves and in others they do not know. This is a cruel experience that occasionally can lead to death in case of excessively bleeding. The WHO describes the problems women who have undergone the procedure face. These include psychological involving pain and physical complications that include shock or hemorrhage, injury to the genital area and problems with sexual intercourse and child birth.

The whole FGM/C procedure violates various human rights recognized by the international treaties. Some of these are the right of all human beings to live conditions that enable them to enjoy good health (Article 25 of UDHR), not to be discriminated on grounds of sex and recognition of the right to highest attainable standards of health (Article 12 of ICCPR), and the right not to be subjected to harmful cultural practices. Article 2(f) of CEDAW asks States to modify or abolish customs and practices which constitute discrimination against women. Article 5(a) of CEDAW also calls for modification of social and cultural patterns of conduct of men and women with a view to achieve the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either sex. The Committee on economic, social and cultural rights in their General Recommendation 14 on FGM/C recommends that State Parties take appropriate and effective measures to eradicate female circumcision among other things. *The Convention on the Rights of the Child* protects all children (below age 18) from all forms of physical and mental violence and maltreatment (Article 19(1)) and they are also protected from torture or cruel, inhuman or degrading treatment (article 37(a) and States are called upon to take effective and appropriate measures to abolish traditional practices prejudicial to the health of children (Article 24(3)). The Action Plan adopted in Beijing Platform for women movement included the girl child as a key issue for consideration by states. The governments and international organizations and NGOs were urged to develop policies and programmes to eliminate all forms of discrimination against the girl child including female genital cutting.

The Kenyan Government has outlawed FGM/C in the children's act where it makes it an offence for anyone to perform the act on any child below the age of 18. Since FGM/C is undertaken in secrecy, there haven't been many known prosecutions of this offence. The new constitution has very clear provisions on the acceptance of culture. In article 11, the constitution recognizes culture as the foundation of the nation and the state undertakes to

promote all forms of national and cultural expression. However in article 27(7) it observes that one should not be discriminated on the grounds of culture among other things. While a person is allowed to participate in a cultural life he/she chooses, a person shall not compel another to perform, observe or undergo any cultural practice or right (Article 27(4)(3)). Art. 2 upholds the supremacy of the constitution and further states that any law that is inconsistent with the constitution including customary law, shall be void to the extent of its inconsistency. This by extension will apply to harmful cultural practices including FGM/C.

Conclusion

Arguments against cultural relativism have held that the theory of universalism of rights is meant to impose the majority's beliefs against the minority, or that it is a western theory being imposed on the entire world. In my view having assessed the practice of FGM/C in Kenya, I have no doubt that it is not linked to the debate of minority versus majority but it is a clear violation of women's human rights. This is a cultural practice that though predominantly undertaken by women, the patriarchal nature of the communities has been a contributory factor that has perpetuated the practice, especially in terms of culture normally shaped by men making attempts to control the sexuality of women. Some communities practice infibulations that entails the sewing up of the vagina completely and that it gets reopened by the man upon marriage, thus guaranteeing virginity. This is a cruel and degrading treatment of a woman.

No matter what name is given to the practice and notwithstanding that it is performed by a medical expert, FGM/C is indeed a violation of women's human rights. Remember the *Vienna Declaration on Human Rights* upheld that "Women Rights are Human Rights." The UN Experts statement in May 2010 did indicate that:

"No one may invoke cultural diversity as an excuse to infringe on human rights or to limit the scope. That cultural diversity should not be used to support segregation and harmful traditional practices which in the name of culture, seek to sanctify differences that run counter to the universality, indivisibility and interdependence of human rights."

I agree and uphold the above statement by the experts. Cultural practice must be practiced but subject to respect of human rights. FGM/C does not meet the test and must be outlawed.

(The author is the Commissioner of the Kenya National Commission on Human Rights.)

Multiculturalism and Human Rights in South Korea

Park Chan-Un
South Korea

General Evaluation of Multiculturalism in Korea

The 2005 CIA *World Factbook* classified Korea as a homogeneous society with negligible ethnic minorities. It means that Koreans have not been familiar with living with foreigners who have different languages and skin colors. However, the situation is rapidly changing due to the increase of migrant workers and international marriages.

As of May 2010, the number of migrants residing in Korea totals up to 1,200,000 (500,000 in 2000) which is slightly over 2% of the total population of 49 million. Among them, there are reportedly 550,000 (50%) migrant workers, 110,000 (10%) internationally married migrant women, and 500,000 others, including international students.

The influx of migrant workers, marriage-based immigrants and other foreigners presents challenges to an ethnically homogenous society because they have diverse national, religious features, and racial backgrounds. Living in Korea and adjusting themselves to Korean culture, foreigners are diffusing their cultures in the Korean society. In other words, Korean culture is being blended with very dissimilar and diverse cultures broadly.

Fortunately, Korean society begins to encourage communication between foreigners and Koreans, and actively tries to deepen mutual understanding between two groups. About 150 civil organizations voluntarily support migrant workers. Both the national government and the local governments announce numerous policies to support them in the name of "society-building that can coexist with foreigners." It is strong trend in Korea that multiculturalism must be one of the most important goals in immigration policy.

However, the key problem with Korea's multicultural policies is that the policies apply only to marriage immigrants and not to migrant workers. Such narrow application of multiculturalism restricts the focus of Korean authorities on international marriage couples of married immigrants. As a result there is a discriminatory element in the law and it will be one of the biggest challenges for Korea regarding the development of a genuine multicultural society. There are also many areas for improvement in the existing laws related to regular migrant workers. The current Employment Permit System (EPS) restricts migrant workers' working period in Korea to a maximum of three years to prevent their settlement in Korea. With such a short duration, accompanying family members are banned. Therefore, the EPS includes principles which are contradictory to multiculturalism since they do not guarantee

all basic rights nor do they promote a multicultural society. In a word, there is a far way to Korean society to go for multiculturalism.

Role of the National Human Rights Commission of Korea for Multiculturalism

The NHRCK was established in 2001 in accordance with the Paris Principles. The foundation of the NHRCK greatly influences the degree of implementation of the international human rights law in the ROK. The National Human Rights Commission Act, the legal basis of the NHRCK, defines human rights which should be protected and promoted by the NHRCK as "any rights and freedoms, including human dignity and worth, guaranteed by the Constitution and law of the ROK, recognized by international human rights treaties entered into and ratified by the ROK, or protected under international customary law."

The NHRCK gives recommendations on laws, systems, policies, and practices related to human rights. The NHRCK has, in the past 8 years, given around 200 policy recommendations to provide direction to the human rights policies of Korean society, and especially, in the beginning of 2006, publicized a recommendation on *the National Action Plan for the Promotion and Protection of Human Rights*, presenting the directions and setting the goals for the human rights areas that the Korean government should focus on.

The NHRCK has functions of investigation and remedy with respect to the human rights violations perpetrated by governmental or public institutions as well as the violation of equality rights (acts of discrimination) perpetrated by individuals. In the case of human rights violations perpetrated by public institutions, the number of incidents lodged as human rights violations in the period of time from the beginning of the NHRCK to August of 2009 was around 31,000; among these, 30,000-odd cases were successfully handled. In the case of discrimination cases in the same period of time 6,500 cases were filed and of these 6,000 cases were successfully handled. In the case of investigation and remedy of discrimination cases, investigation and remedy were carried out, not only upon discriminatory acts leading to violation of equality rights perpetrated by or occurring between national institutions and public and/or private corporations, but also those occurring between private individuals. The discrimination complaints are mainly based on sexual discrimination, discrimination against the disabled, age discrimination, discrimination based on physical conditions such as external appearance, discrimination based on race and skin color, and discrimination based on social status.

Therefore, the NHRCK has an important role to play to realize multiculturalism for immigrants.

Anti-Discrimination Act Bill

In 2006, the NHRCK drafted and subsequently passed a recommendation proposal for the *Anti-Discrimination Act Bill* to the Prime Minister. The following year, the government drafted the *Anti-Discrimination Act Bill* only to dispose of it as the term of 17th Assembly expired.

The original draft bill of the *Anti-Discrimination Act* by the NHRCK included 20 grounds of discrimination and provisions for a shift in the burden of proof and manifold anti-discrimination measures. However, a great portion of the original draft bill was dropped and revised by the government.

There was strong opposition from some Christian groups and from the business sector at the time the *Anti-Discrimination Act Bill* was presented, which consequently pressured the Ministry of Justice to drop some of the grounds for discrimination. Thus, even if the NHRCK pushes to reenact the initial *Anti-Discrimination Act Bill*, strong opposition will remain.

Rights of Refugees and Asylum Seekers

As of May 2010, 2,590 people have applied for refugee status and 183 have received recognition. 107 have received humanitarian status. The refugee recognition process is prolonged, and the refugee status recognition rate is low. Also, long-term detention of refugee applicants is seen as problematic.

It is reported that during the refugee recognition process, applicants detained in protective facility for foreigners must remain detained until they receive the final result. Sometimes an asylum seeker has been detained and charged with seeking illegal employment.

There are insufficient social welfare protections for refugees, since they are only assisted with the minimum cost of living. In case of refugee applicants, employment is generally prohibited regardless of the long-pending refugee recognition process that places their basic survival under threat.

Those who are granted refugee status, under the *National Basic Livelihood Security Law*, become beneficiaries. However, benefits from the *National Basic Livelihood Security Law* are the only social security provided to them. Those granted humanitarian status cannot benefit from any kind of social security system.

Those granted humanitarian status are generally prohibited from employment, and, furthermore, the lack of legal grounds for stay leads to disqualification from any social welfare benefits, thereby violating their right to livelihood.

Individual Complaints of human rights treaties

The ROK has acceded to international instruments including the ICCPR and its First Optional Protocol which make individuals complain to monitoring bodies when their rights under the instruments are violated. In accordance with this procedure, the UN Human Rights Committee has decided that the government violated the rights of the authors, and recommended providing effective remedies in more than 10 individual communications cases. However, the attitude of the government towards the Views of the UN Human Rights Committee was indeed disappointing.

Korean government has not made adequate compensation and effective remedies for all other cases that the UN Human Rights Committee recommended. With regard to this matter, the UN Human Rights Committee, during the Second state party report examination in 1999, pointed out that the ROK should immediately give effect to the views of the Committee, so that the author of communication could be provided a remedy without referring back to the domestic courts.

With regard to an issue of complying with the UN Human Rights Committee's decisions on individual communications, the domestic scholars and law professionals have argued that it should be carried out by adding reason of retrial to the existing criminal law, or newly establishing a reason of reparation within the State Compensation Act. Or, in the event of a decision that went against the ICCPR, it has been suggested that there be instituted a mandatory procedure for retrial, and also for the court's respecting of the HRC's interpretations in its deliberations. In other words, they say that remedy should be provided through the judicial mechanism. Recently, it has been said that this argument is realistically and legally difficult to embrace. Because the individual communications procedure is quasi-judicial in nature, it is considered satisfying if the domestic procedure meets the quasi-judicial procedure. This can be an administrative remedial procedure. According to this methodology, it would suffice to take on the method of examining the creation of a special committee within the administrative to carry out domestic implementations of the HRC's decisions (the administrative method), and make a special law for this purpose.

Conclusions

There is no royal way for managing the cultural diversity resulting from migration, a highly contested and evolving reality. Human rights and culture are not mutually exclusive. All actors, state and non-state, have a responsibility to give due recognition to all migrants as bearers of both culture and rights. To the extent that culture embodies similarities and difference, all societies embody diversity and pluralism. Cultural change is constant and migration contributes to cultural change and transformation in both countries of origin and destination. Nevertheless, a human rights approach requires recognition of cultural diversity within the context of internationally recognized standards. The non-recognition of cultural difference and plurality, and demands for assimilation, can result in significant human rights violations. Prejudice and ignorance often fuel intolerance and acts of hate toward migrants. While legislative and policy measures are important to counter-act such attitudes, education and awareness-building to change attitudes are vital to achieving inclusion and acceptance.

(The author is Law Professor of Hanyang University, South Korea.)

Protecting Cultural Diversity through a Framework of Human Rights: the New Zealand Experience

Jeremy Pope
New Zealand

This paper briefly traces the evolution of the recognition and protection of cultural diversity in New Zealand through the development of an effective human rights framework. European settlement of the country started with an initial expectation that its society would ultimately be essentially mono-cultural, but it has now evolved into a multi-cultural society committed to the protection of all cultures underwritten by a robust human rights structure. The paper suggests that the human rights approach can be an effective means for the promotion and guaranteeing of cultural diversity.

Introduction

Looking back to the emergence of the nation state, it is difficult to see a time when a country could be said to have been truly homogenous. Throughout the ages, people have travelled between countries and settled in lands other than their own, whether for reasons of trade, of seeking employment, or, less happily, of slavery or of conquests. Indeed, my own country, New Zealand, is the product of a series of major migrations – first from Polynesia and then from Europe. Most recently, a third "great migration" has started, namely from Asia.

If there were exceptions in the past, in an age of globalisation it certainly cannot be said today. With greater movement of peoples have come increased challenges in the realms of cultural, religious and linguistic diversity. History has taught us that frequently minorities caught up in these movements suffer from discrimination. And it has taught us, too, that domestic conflict has often had its origins in discrimination or in the exploitation of cultural differences.

Responding to these lessons, the international community has recognised that international human rights standards are the key to building strong, stable nation states, states in which diversity is celebrated as an asset and not a liability.

The Evolution of Human Rights in New Zealand

The modern state of New Zealand was founded in 1840, when a British delegation entered into a formal treaty with the indigeneous Maori. Today, the Treaty of Waitangi is regarded as the country's founding document. The signing of the Treaty took place shortly

after slavery had been abolished in the British Empire and at a time when humanitarian ideals were driving British government policies.

The British government's delegation to New Zealand was instructed that "the free intelligent consent of the natives… [to Britain assuming sovereignty over the country] shall first be obtained." Thereafter, it was told, "all dealings with the natives for their lands must be conducted on the same principles of sincerity, justice and good faith as must govern your transactions with them for the recognition of Her Majesty's sovereignty in the Islands. Nor is this all: they must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves."

For well over a century these principles, essentially those of sound human rights practice, were not complied with. Quite the reverse. The European settlers who followed were hungry for farmland, and over the first 60 years Maori lost much of their land through a combination of forced confiscations, and fraudulent transactions. Promises of schools and hospitals were not kept, peaceful non-violent opposition was crushed with military force. The plight of Maori was compounded by the impact of European-borne diseases to which they had little resistance, and by the year 1900 the Maori population had dwindled to the point where it was considered to be on the brink of extinction. Some wrote then that the task of the [European] was to "smooth the pillow of the dying race."

Perversely, as resistance to the new diseases grew, over the following 50 years the Maori population began to grow but as it did, much of the remaining Maori-owned land was lost.

Well in to the twentieth century the New Zealand government regarded the Treaty of Waitangi as a worthless piece of paper, wholly without legal effect, and declined requests from Maori that it comply with its provisions. It was not until as recently as 1974 that the New Zealand government acknowledged the special significance of that land and other Maori taonga (treasures such as language and customs) held for Maori, and the following year a Tribunal[1] was established to look at breaches of the Treaty of 1840.

1. The Waitangi Tribunal was established in 1975 by the Treaty of Waitangi Act 1975. The Tribunal is a permanent commission of inquiry charged with making recommendations on claims brought by Maori relating to actions or omissions of the Crown, which breach the promises made in the Treaty of Waitangi. The Tribunal comprises up to 20 members, who are appointed by the Governor-General on the recommendation of the Minister of Maori Affairs, for their expertise in the matters that are likely to come before them. It also has a chairperson, who is either a judge or a retired judge of the High Court or the chief judge of the Maori Land Court, and a deputy chairperson, who is a judge of the Maori Land Court. Approximately half the members are Maori and half are Pakeha.

The Tribunal is supported in this by the Ministry of Justice, through the Waitangi Tribunal Unit, which provides administrative, research, and support services. The Tribunal's chairperson and deputy chairperson are based in Wellington and their offices are located alongside the business unit's offices in the central business district. The role of the Tribunal, set out in section 5 of the Treaty of Waitangi Act, includes inquiring into and making recommendations upon any claim properly submitted to the Tribunal, examining and reporting on any proposed legislation referred to the Tribunal by the House of Representatives or a Minister of the Crown, and making recommendations or determinations in respect of certain Crown forest land, railways land, State-owned enterprise land, and land transferred to educational institutions.

A "White New Zealand" Policy – A Mono-Cultural Country

From its earliest days the British settlers, who soon comprised the majority population, had a strong belief in the superiority of white people and saw the country essentially as being a 'Britain of the South.' Chinese were particular victims of the "White New Zealand" policy they developed.

The first Chinese were drawn to the goldfields of the South Island in the 1860s, where their capacity for hard work, their meticulous approach to their task and their reluctance to spend what they had earned, engendered hostility from others working the goldfields. Prejudice against the Chinese goldminers forced them to live in camps separate from the rest.

Fears of Chinese arriving to work on the goldfields and an irrational apprehension of intermarriage led numbers to be restricted in 1881. To this was added a heavy poll tax levied on every intending Chinese miner that had to be paid in advance of arrival. As well as this, prospective Chinese arrivals had to pass an English-language test before they were allowed to enter the country.

Of all the early migrants, Chinese were the most discriminated against. But this is not to say that similar, if less drastic, measures were not taken to limit arrivals of Indians and other Asians. By 1920 a new principle was added – people who were neither British nor Irish (both by birth and by parentage) were required to have permission before they entered. Dalmatians and Italians were added to the list of those being excluded. At this time a maximum of 100 Chinese were allowed to enter each year, limited to women who were the wives or fiancées of New Zealand-born Chinese men. In 1939, after the Japanese occupation of southern China, temporary arrangements were made for relatives of Chinese men already living in New Zealand.

It was not until as late as 1974 that changes in New Zealand's immigration policy started to ignore a prospective migrant's colour, religion and ethnic origin.

Other groups had also suffered. In the 1960s and early 1970s some Fijians, Tongans and Western Samoans arrived under a government quota system, but many had only temporary visas and simply stayed on. The over-stayers were ignored by the government when the demand for labour was high. But when this diminished, overstayers were chased up (by means that included controversial dawn raids on their homes) and deported.

The Impact of the Universal Declaration of Human Rights

If I may, I would go back in time to 1948. The Second World War had just concluded, and a determination to avoid any recurrence of the horrors the world had so recently witnessed drove the international community to make its historic *Universal Declaration of Human Rights*. This marked the opening of a new chapter in New Zealand's history, no less than in China and the wider world – a chapter that is still being written.

China was, of course, a member of the privileged inner group that developed the text and, as we all know, supported it when the General Assembly voted to adopt the convention on 10 December 1948. (The *Convention on the Prevention and Punishment of Genocide* was signed at the same time.)

The Declaration represents the first global expression of the rights to which all human beings are entitled by virtue alone of their being human. Its 30 articles have since been elaborated in subsequent treaties, regional human rights instruments, and national constitutions and laws.

In the words of the former UN High Commissioner for Human Rights, Mary Robinson:

This project bears a special symbolism. It immediately brings to us a sense of the world's diversity; it is a rich tapestry with so many different languages and peoples. But, at the same time, it shows that all of us, in our different forms of expression, can speak the "common language of humanity," the language of human rights, which is enshrined in the Universal Declaration of Human Rights.

The influence of the Declaration has been profound. It has been translated and disseminated into no fewer than than 300 languages and dialects: from Abkhaz to Zulu. The Office of the High Commissioner for Human Rights has even been awarded the Guinness World Record for having produced the most translated document – indeed, the most 'universal' document – in the world.

The Universality of Human Rights

At times, some western powers have resorted to human rights for propaganda purposes, giving rise to counter arguments that human rights is a product of western cultures.

The Indian writer and Nobel Laureate Amartya Sen strongly argued against this view when he said that:

While the values underlying democracy (such as political tolerance and cherishing liberty and participation) can be found in much classical western writing, they can be similarly found in classical Asian literature as well. The value of tolerance and liberty is a part of world heritage, not a narrowly western creation.

I am told, too, that philosophical concepts found in the teachings of Confucius include the notion of good governance and thereby key elements of human rights.

In similar vein was the statement by then State Councillor Tang Jiaxuan in 2005 when he opened a human rights workshop in Beijing that was organised partly by the Office of the UN High Commissioner for Human Rights, namely:

An important aspect of our cooperation is to uphold the precious cultural heritages and values of our region and at the same time draw on the useful experiences of other regions. As the cradle of several of the world's ancient civilisations, cultures and philosophies in the

Asia Pacific are rich and profound. Tolerance, benevolence, self-discipline, self-strengthening and the value on humanity, harmony and order are our precious assets. … The Chinese nation has a tradition of cherishing human dignity and values. From the earlier precept of "putting people first" several millennia ago to today's idea of "governing the country for the people," human rights concepts in China have been evolving with the times … Putting into practice the basic principle of the rule of law in all fields, China has advanced the reform of its political structure vigorously yet steadfastly, and persisted in improving the country's democracy and legal system. The decision by China's National Peoples Congress in March 2004 to incorporate the provision that the "State respects and protects human rights" into the Constitution has further highlighted the prominent position of human rights in China's national development strategy.

Yet there remain some today who still argue that the Declaration is no more than a statement of Western-held views as to what human rights should comprise. As well as ignoring the force of the two eminent figures I have quoted, this view also overlooks the fact that the Declaration was drafted by a group of experts chosen to reflect the globe's cultural diversity in which China was legally represented – the others being from Australia, Belgium, the Byelorussian Soviet Socialist Republic, Chile, Cuba, Egypt, France, India, Iran, Lebanon, Panama, Philippines, United Kingdom, United States, the USSR, Uruguay and Yugoslavia. Moreover, when it came to the vote not a single country voted against the adoption of the Declaration. The Egyptian expert on the Group is reported as saying that "… we all travelled by different roads, and we strongly disagreed along the way, but for our different reasons we all reached the same destination."

Those who argue against the text tend to overlook its final three, and most important articles – articles that address the duty of the individual to society, and the prohibition of exploiting the use of rights to undermine the objectives of the United Nations itself.

It is instructive, too, that in the *Bangkok Declaration* of 1993, Ministers and representatives of Asian States meeting ahead of the World Conference on Human Rights held in Vienna later that year, reaffirmed their commitment to the principles of the *United Nations Charter* and to the *Universal Declaration of Human Rights*. They stated their view of the interdependence and indivisibility of human rights, and stressed the need for universality, objectivity and non-selectivity of human rights.

Follow Up to the Declaration

Agreement on the text of the *Universal Declaration of Human Rights* gave rise to considerable work amongst the nations of the world as progressively they constructed the architecture of global human rights. A number of conventions emerged that fleshed out in greater detail rights recognised in the Declaration, a process that still continues.

First there followed the *International Covenant on Civil and Political Rights* of 1966, signed by China in 1998, and the *International Covenant on Economic, Social and Cultural Rights* that China ratified in 2001 (something the United States of America has still not done 33 years after having signed it – China took barely three years to do so).[1]

Then came the 1979 Convention on the *Eliminationof All Forms of Discrimination Against Women* (CEDAW) (China was an original signatory); the 1984 *Multilateral Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; the *1989 Convention on the Rights of the Child* (the first legally binding international convention to affirm human rights for all children and signed by both New Zealand and China); and the *2006 Convention on the Rights of Persons with Disabilities* (to which China and New Zealand were both early signatories).

However, neither country has felt ready to sign the *1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.*

Most recently there has been the *2007 United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), a statement that China embraced well before a somewhat reluctant New Zealand.

Monitoring the International Conventions

Side by side with the development of these instruments has been the evolution of international monitoring mechanisms. These now enable those countries that are parties to the conventions to satisfy themselves that others are complying with their undertakings. There was once a time when governments shrank from having their human rights records examined by others, and when people in general were cynical about the effectiveness of international conventions – seeing them as mere pieces of paper that were more honoured in the breach than in the observance.

Not any more. Today, by common agreement, when a country delegation appears before the relevant UN committee it is questioned closely by international experts about aspects of its country's implementation of its obligations. The process is not so much adversarial – although criticism at times can be quite sharp – but rather constructive. It is the commonly shared wish of all to see the conventions functioning as intended. The process is designed to be helpful, where necessary encouraging, but not to alienate the government whose record is under scrutiny.

It is important for all to appreciate that the human rights conventions are forward-looking. They do not profess to describe the world the way it already is. There would be little point in that. Rather the conventions have elements that are aspirational – they articulate a

1. It took the USA 15 years to ratify the ICCPR.

state of affairs that all who sign them pledge to work towards achieving, so bringing about a universal reality.

In essence, the conventions provide universally-agreed road maps. As such, we can all check our progress against them, however none of us can pretend that we have reached the end of any journey. Member states of the UN, whether or not they have ratified human rights conventions, are now regularly examined by their peers on their national human rights performance. The fact that this has been agreed to by the international community is further recognition that the manner in which states treat people within their borders is of legitimate of interest to the rest of the world. It can impact – for good or for ill – on global peace and the maintenance of sustainable development. There is clearly much work for every country to undertake before it can be said that anyone is fully compliant.

New Zealand Society Today

When we look at New Zealand's human rights record today we see a very different country from the one described at the end of the Second World War. Slowly but surely progress has been made in the evolution of a society in which human rights provide guarantees of cultural diversity to all its citizens.

Change has been profound, but it has also been gradual. The introduction in 1877 of universal, free, compulsory primary education, and in the 1890s the establishment of one of the first old age pensions in the world, were early indications of the importance to New Zealanders of what is now termed economic, social and cultural rights.

Increasingly the international human rights instruments have been used, with policy-makers testing their proposed innovations against the country's international obligations. There have, however, been instances of regression.

For example, in 1976 New Zealand defied the rest of the world's stand against racism and the crime of apartheid. Its action in sending a national sports team to play rugby in apartheid South Africa not only greatly lowered the country's international standing but also provoked no fewer than 28 nations to walk out from the 1976 Montreal Olympics in protest. Yet only five years later, in one of the most extraordinary events in New Zealand in recent years, demonstrations swept the country in protest at the presence in New Zealand of a rugby team representing the South African apartheid state. It was a cathartic moment, with families divided over the issue. When the dust finally settled most of those who had then supported the sporting contact conceded that in retrospect they had been mistaken.

A similar about turn has taken place with reference to the historic abuse suffered by our Chinese residents and citizens. At the Chinese New Year celebration on 12 February 2002, Prime Minister Helen Clark announced that "the government has decided to make a formal apology to those Chinese people who paid the poll tax and suffered other discrimination

imposed by statute and to their descendants. With respect to the poll tax we recognise the considerable hardship it imposed and that the cost of it and the impact of other discriminatory immigration practices split families apart. Today," she said, "We also express our sorrow and regret that such practices were once considered appropriate."

Evidencing this very different era in New Zealand's race relations performance are three Chinese. First, there is the Shanghai-born politician, the Hon. Pansy Wong, Minister for Women and Ethnic Affairs in the present government. As well there are two New Zealand-born Chinese, the nationally prominent mayors of major cities – Dunedin (with Wing Ho (Peter) Chin), and Gisborne (with Meng Foon). Each is completing his second term in office, demonstrating a readiness among all the people of the cities to vote repeatedly for candidates from cultures other than their own. The most recent general election produced the most diverse Parliament ever with increased numbers of Pacific and Asian MPs. Reflected in this attitude, too, is the fact that in recent times the country has had as its Governor-General (i.e. head of state) both Maori and Indian. Across the country barely a month goes by without there being a major cultural celebration, as varied as Chinese New Year, the Diwali Festival of Lights, Maori Language Week, Dragon Boat races, Samoan Language Week and Holocaust Remembrance Day, each of them bringing citizens together in a celebration of the country's cultural diversity.

New Zealand aspires to being a fair, safe and just society, in which diversity is valued and human rights are respected. On its journey, and in just a few decades, the country has gone from having a society that saw its future as being essentially monocultural to one where, among its population of 4.4 million people, it includes people drawn from over 120 nations. Some have arrived out of choice, others as a consequence of political upheavals in their own lands. Today about a quarter of the New Zealand population was born in a foreign country.

Some argue the primacy of civil and political rights, but New Zealand has always placed importance on economic, social and cultural rights. Indeed, when the Universal Declaration of Human Rights was being debated in Paris in 1948 our delegate, Dr Colin Aikman (later my law professor) stated, in no uncertain terms, that:

My delegation … attaches equal importance to all the articles … At the same time we regard with particular satisfaction the place which is given in the declaration to social and economic rights. Experience in New Zealand has taught us that the assertion of the right of personal freedom is incomplete unless it is related to the social and economic rights of the common man. There can be no difference of opinion as to the tyranny of privation and want. There is no dictator more terrible than hunger. And we have found in New Zealand that only with social security in its widest sense can the individual reach his full stature. Therefore it can be understood why we emphasise the right to work, the right to a standard of living adequate for health and well-being, and the right to security in the event of unemployment,

sickness, disability, widowhood and old age. Also the fact that the common man is a social being requires that he should have the right to education, the right to rest and leisure, and the right to freely participate in the cultural life of the community.

These social and economic rights can give the individual the normal conditions of life that make for the larger freedom. And in New Zealand we accept that it is the function of government to promote their realisation.

Unfinished Business

Yet, like the rest of world, for all its progress New Zealand still has significant work to do in the area of human rights. Most conspicuous is a continuing failure to redress a number of long-standing Maori grievances arising out of breaches of the state's obligations under the *Treaty of Waitangi*. There is also a growing gap between rich and poor, and a clear over-representation of Maori and Pacific people in prison, particularly Maori women. Major elements of poverty need to be addressed too, as does pay equity as between men and women.

On the positive side, Maori are now universally recognised as the original inhabitants (tangata whenua) of New Zealand, and their language, Te Reo Maori, has been accorded the status of being an official language (whereas previously there had only been English). In the months ahead there will be a debate on the country's constitution, in which the status of the Treaty of Waitangi is expected to feature prominently.[1]

The country has also made major strides in combating racism. Although surveys suggest that perceived discrimination against Asian people has increased recently, the same surveys show that, at the same time, a greater number of New Zealanders felt warmly towards Asians in their country, and that there was increased personal interaction, particularly in urban areas. Progress, perhaps, but certainly no room for complacency.

In March of this year, the UN Human Rights Committee, when reviewing the country's fifth periodic report on its compliance with the *International Covenant on Civil and Political Rights*, made some 16 recommendations to the New Zealand government. The country also has to work through precisely what actions it needs to take in order to implement the *Declaration of the Rights of Indigenous Peoples* (UNDRIP), especially given that the UNDRIP is widely expected to result in a binding human rights convention being concluded in due course.

Over all, change has been far-reaching, but it has generally been incremental. Increasingly, international human rights instruments are being used by policy-makers to test proposed domestic innovations against international obligations.

1. In July 2010, the UN Secretary-General's Special Rapporteur on the Human Rights of Indigeneous People urged the Government to provide constitutional security to the principles enshrined in the Treaty of Waitangi that are related to internationally-protected rights, noting that the Treaty's principles appear to be vulnerable to political discretion.

In New Zealand's efforts to build a robust and principled human rights framework, a central role will continue to be played by the New Zealand Human Rights Commission. This is an independent body established to:

* advocate and promote respect for human rights in New Zealand;

* encourage harmonious relations between individuals and among the diverse groups in New Zealand;

* advise on equal employment opportunities; and

* help resolve complaints about discrimination.

In the course of discharging this mandate, the New Zealand Human Rights Commission adopts a "human rights approach," which is also the basis for much United Nations development policy.

The six elements of this approach involve:

* the *linking* of decision-making at every level to human rights standards set out in the relevant human rights Covenants and Conventions;

* the *identification* of all the relevant human rights of all involved and, in the case of conflict, the balancing of the various rights to maximise respect for all rights and right-holders;

* an emphasis on the *participation* of individuals and groups in decision-making;

* *accountability* for actions and decisions, which allows individuals and groups to complain about decisions that affect them adversely;

* *non-discrimination* among individuals and groups through the equal enjoyment of rights and obligations by all;

* the *empowerment* of individuals and groups by allowing them to use rights as leverage for action and to legitimise their voice in decision-making; and

* the *linking of decision-making* at every level *to the agreed human rights norms*.

From this standpoint the New Zealand Human Rights Commission examines proposed legislation, taking as the starting point the international human rights conventions to which the country is party. Where issues arise, the Commission makes representations to parliamentary committees and seeks to achieve amendments that fully comply with New Zealand's international obligations. Where the subject of concern is one of policy rather than legislation, the Commission engages the relevant government department in dialogue.

In this way the international conventions are continually in focus, and growing numbers of government departments are consciously taking the conventions into account in their day-to-day administration and as new policies are being formulated.

The Human Rights Commission does not claim to be alone in adopting this approach, but rather sees it as international best practice. Nor can it pretend that successive governments have always accepted the Commission's advice. But in some cases where an issue continues

to be of serious concern, the Commission will have generated a public discussion that may lead to a more human rights friendly outcome when the matter next arises.

The Commission does very much more than advise government. The basic human right to be treated with dignity and respect is one that all individuals should be observing in their everyday lives, not just the state and its institutions. Therefore the Commission works with communities to enlarge their understandings as well as running a complaints service to which people can turn for advice and guidance when they feel their rights have been infringed.

Conclusion

As this paper illustrates, the international human rights conventions are of universal application; they are relevant to all cultures; and they serve as an essential set of signposts by which countries can measure their own progress towards achieving a human rights framework that accommodates and provides effective protection for cultural differences.

As State Councillor Tang observed in the speech already quoted from:

Given the vastly different cultural heritages and conditions of dozens of Asia Pacific countries, the ancient Chinese philosopher Confucius' advice that "Gentlemen should live in harmony without uniformity" could serve as a guide in our regional cooperation. On the one hand, we should uphold the purposes and principles enshrined in the UN Charter and international human rights instruments and unswervingly promote and protect human rights to meet the fundamental interests of the people. On the other hand, every country should choose its own way to promote and protect human rights in line with its national conditions.

He is saying that the *Universal Declaration of Human Rights* is not about conformity – it is all about diversity. The former UN Secretary-General Kofi Annan reinforced the aspects of diversity when celebrating the occasion of the 50th anniversary of the adoption of the *Universal Declaration of Human Rights*:

There is no single model of democracy, or of human rights, or of cultural expression for all the world. But for all the world, there must be democracy, human rights and free cultural expression. … The *Universal Declaration of Human Rights*, far from insisting on uniformity, is the basic condition for global diversity. It is the standard for an emerging era in which communication and collaboration between states and peoples will determine their success and survival.

(The author is Commissioner of New Zealand Human Rights Commission.)

Cultural Diversity and Human Rights

Nikhil Seth
UN

Introduction

Human identity is inherently linked to issues of cultural background, ethnicity, language and religion, among other things, and defines how individuals and groups see themselves and create a sense of belonging. The rapid pace of globalization has led to greater interaction between and among peoples and cultures, opening to greater scrutiny, long held views and perceptions. While on the one hand, affiliations and a sense of connectedness help to affirm membership within a group and empower people to act collectively, strong cultural bonding can also lead to divisiveness among groups with divergent views. The forces of change strongly powered by globalization and inter-dependence are inevitably creating tensions within societies bringing a sharp focus on the relationship between cultural diversity and universal human rights.

From its very inception, the United Nations has considered the issue of human rights as a fundamental principle of international law. This principle is embodied in the notion that all member states must promote "universal respect for, and observance of, human rights and fundamental freedoms."[1] To strengthen the inextricable nature of this idea, the *Universal Declaration of Human Rights*[2] affirmed consensus on a universal standard of human rights, proclaiming:

Universal Declaration of Human Rights (UDHR) 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. …[3]

These universal rights were further enhanced by the establishment of two international covenants on human rights, namely, *the International Covenant on Economic, Social and Cultural Rights*, and *the International Covenant on Civil and Political Rights* which propounded a set of instruments to address numerous concerns including genocide, slavery, torture, racial discrimination, discrimination against women, rights of the child, minorities

1. *United Nations Charter*
2. Resolution 217 A (III)
3. Ibid

and religious tolerance. The consensus of the UDHR was more recently echoed in *the Vienna Declaration and Programme of Action*[1] at the United Nations World Conference on Human Rights in Austria, in June 1993, which reiterated and reaffirmed the status of the *Universal Declaration* as a "common standard" for everyone. T*he Vienna Declaration* continues to reinforce the universality of human rights, stating that, "All human rights are universal, indivisible and interdependent and interrelated."

It is important to note, however, that the United Nations, declaration on universal human rights does not impose any one cultural standard, but is articulated as a legal standard to accord minimum protection necessary for the preservation of human dignity. Therefore, the *Declaration*, adopted by consensus of the international community, is not reflective of any particular cultural hegemony or set of traditions, but is rather based on broad standards and principles that are as necessary as they are universal. Accordingly, sufficient flexibility is incorporated in the language to account for and protect cultural diversity and integrity and to ensure that cultural rights are incorporated within the framework of the UDHR as an inherently critical aspect.

In the following sections, the paper will consider the following three issues: (i) cultural diversity and human rights; (ii) cultural diversity and the Alliance of Civilizations; and (iii) cultural diversity and gender rights.

(i) Cultural Diversity and Human Rights

The Vienna Declaration reiterated and explicitly included consideration for culture in human rights promotion and protection, stating that "the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind." This assertion is however, designed to reinforce the notion that member states have a duty to promote and protect human rights regardless of their cultural systems.

Furthermore, the respect for and protection of cultural diversity and integrity is embodied in the instruments of human rights law. These include: *the International Bill of Rights; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Declaration on Race and Racial Prejudice; the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; the Declaration on the Principles of International Cultural Cooperation; the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; the Declaration on the Right to Development; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;* and *the ILO Convention No. 169 on the Rights of*

1. A/CONF.157/23

Indigenous and Tribal Peoples.

It is undeniable that at the individual level or in a collective sense, everyone has the right to enjoy and develop their own cultural life and identity. This right however is not limitless, but is circumvented by an overriding concern to avoid the infringement of values and practices on others, or use them for the subjugation or cause harm to others. In other words, cultural prerogatives and practices can be challenged even in well-entrenched traditions such as in the case of slavery, genocide, discrimination on grounds of sex, race, language or religion, or violation of any other universal human rights and fundamental freedoms established under international law.

Safeguarding cultural diversity and identity therefore, has to be considered within the prism of rights versus cultural relativism, and the protection of human life, security and dignity versus intrusion and disruption to traditions. This is particularly the case when traditional cultural mores and ways do not effectively provide essential safeguards to individuals and groups. On the other hand, cultural practices can incorporate the principles of universal human rights and freedoms and implement them according to international standards.

There is thus an assumption that it is possible to draw on traditional cultural values to reinforce the application and relevance of universal human rights by emphasizing common, core values that are shared by all cultures, namely the intrinsic value of life, social order and protection from arbitrary rule. These are the basic values embodied in universal human rights. The approach to bridging the issue of human rights with cultural diversity is in the interest of promoting greater tolerance, mutual respect and cultural pluralism, and ultimately, a common understanding of, and international cooperation for, human rights.

With these considerations in mind, the General Assembly adopted a resolution in December 2007 on *Human Rights and Cultural Diversity*[1] that reaffirmed the "importance for all peoples and nations to hold, develop and preserve their cultural heritage and traditions in a national and international atmosphere of peace, tolerance and mutual respect." The resolution also emphasized that "the promotion of cultural pluralism and tolerance at the national, regional and international levels is important for enhancing respect for cultural rights and cultural diversity" and urged member states to reflect the cultural diversity within their political and legal systems to "avoid marginalization and exclusion of, and discrimination against, specific sectors of society."

In its efforts to promote cultural diversity, UNESCO has stressed the connection between the latter and human rights. As stated in the 2009 World Report entitled "Investing in cultural diversity and Intercultural Dialogue," highlighting the cultural dimensions of

1. A/RES/62/155

human rights should in no way be understood as undermining universality but rather as encouraging a sense of ownership of these rights by all, in their diversity. This conception also prevails in the *Universal Declaration on Cultural Diversity*, which states that: "The defence of cultural diversity is an ethical imperative inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope."

(ii) Cultural Diversity and the Alliance of Civilizations

The need for a common understanding and agreement on issues of human rights becomes increasingly necessary and urgent in a world of inequalities and paradoxes. While diversity contributes greatly to the development of ideas and initiatives, it can also lead to polarized perceptions, injustice, prejudice and conflict and exacerbate the differences between the rich and the poor and between the "haves" and the "have-nots."

To build bridges between societies and promote dialogue and understanding and forge the collective political will to address the world's imbalances, the Secretary General of the United Nations launched the Alliance of Civilizations in 2005. The Alliance affirms a broad consensus across nations, cultures and religions that all societies are bound together in their common humanity and quest for stability, prosperity and peaceful co-existence. To guide this initiative, the Secretary-General established a High-level Group to report on the work of the Alliance.[1]

The Report highlighted that while there is broad–based consensus on general principles of equality, respect and tolerance within the global community, much still needs to be done in order to counter issues of extremism, killing and persecution based on religion, ethnicity, or language, and isolationism and marginalization of groups and individuals for political, social, economic or cultural reasons.

General Policy Recommendations of the Report includes:

• A renewed commitment to multilateralism. Many of the problems facing the international community can only be addressed effectively within a multilateral framework by achieving a common understanding and consensus among all parties. It is therefore necessary that member states continue to work through institutions such as the United Nations.

• A full and consistent respect for international law and human rights. In order to avoid polarization between communities and selective defence of universal human rights, a genuine dialogue must prevail among nations that are based on a common understanding of

1. Report of the High-level Group, 13 November 2006.

international human rights principles and a universal commitment to their full and consistent application. In particular, this dialogue must be founded on respect for human rights (including freedom of conscience, freedom of expression and protection from torture and other inhuman or degrading treatment), as defined in the *Universal Declaration of Human Rights, the Geneva Conventions*, and other basic documents, as well as on a recognition of the authority of international criminal courts.

• Coordinated migration policies consistent with human rights standards. Global migration is at unprecedented levels, numbering nearly 200 million in 2006.[1] It is a reality in the modern era and an important feature of globalization. The root causes of migration lie in major economic, demographic and social disparities as well as crises and environmental degradation including the adverse impacts of climate change. However, it can be managed more effectively when policies are coordinated between countries of origin, transit and destination for migrants and when they are consistent with international human rights law, international humanitarian law, and international agreements which guide the protection of refugees and internally displaced persons.

• Combating poverty and economic inequities. An Alliance of Civilizations can only be fully realized within an international framework that includes the commitment of all countries to work toward the achievement of the Millennium Development Goals. Global inequalities are growing at a staggering rate. In sub-Saharan Africa, a large proportion of the population lives under a dollar a day. Although the continent accounts for nearly a sixth of world population, it represents less than 3% of global trade and lags behind in other areas, including investment, education and health. These problems must be tackled urgently, as the increasing gap between rich and poor plays an important role in fuelling resentment and eroding global solidarity.

• Protection of the freedom of worship. Freedom of religion and freedom of worship are fundamental rights to be guaranteed by all countries and faith communities. Therefore, particular attention must be paid to the respect for religious monuments and holy sites, as they have a significance that goes to the core of individual and collective religious identity. The violation and desecration of places of worship can grievously damage relations between communities and raise the risk of triggering widespread violence. In line with the resolution adopted by the UN General Assembly in 2001, governments should take a strong stand against the desecration of holy sites and places of worship and take responsibility for their protection. It is also necessary for civil society and international organizations to help promote a culture of tolerance and respect for all religions.

• Exercising responsible leadership. Many of the issues feeding tensions between

1. The report of the Secretary-General on International Migration and Development (6 June 2006), states that international migrants (nearly 191 million), constitute at least 20% of the population in 41 countries.

communities arise at the crossroads of politics and religion. Divisive language, tactics or policies that inflame tensions and existing differences lead to damaging and destructive effects and fuel the spread of hatred and mistrust among groups. Leaders and shapers of public opinion have a special responsibility therefore to make every effort to promote understanding among cultures and mutual respect of religious belief and traditions and to avoid using violent or provocative language about the beliefs or sacred symbols of any one group.

• The central importance of civil society activism. Political will and action, while necessary, cannot advance policy recommendations without the support of civil society in order to achieve effecting lasting change. Organizations that are in the forefront of service delivery and are intimately involved in engaging with the public at the local and grassroots levels, have the knowledge, know-how and experience necessary to work to implement rights-based policies that are accepted and incorporated within the social, political, cultural, financial and religious institutions in local communities. To facilitate their role, every effort must be made to support and work with established civil society groups and organizations.

• Establishing partnerships to advance an Alliance of Civilizations. Partnerships should be developed and strengthened within the framework of the Alliance of Civilizations among international organizations. Special attention should be given to organizations within the United Nations system that have already been working with the Alliance, namely: the United Nations Educational Scientific and Cultural Organization (UNESCO), the European Union, the Organization for Security and Cooperation in Europe (OSCE), the Organization of the Islamic Conference (OIC), the League of Arab States, the Islamic Educational Scientific and Cultural Organization (ISESCO), United Cities and Local Governments (UCLG), and the World Tourism Organization (UNWTO), among other international and national organizations, public and private.

The Annual Forums of the Alliance of Civilizations have translated these policy guidelines into concrete projects that foster intercultural dialogue and promote a culture of peace. These activities and those carried out by other United Nations actors in similar fields are presented in annual reports to the United Nations General Assembly.

(iii) Cultural Diversity and Gender Rights

One of the purposes of the United Nations, as stated in its Charter, is to promote universal respect for human rights and fundamental freedoms without distinction of any kind, including any distinction as to sex. The promotion of women's rights received particular consideration of this issue in the adoption of *the Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW)[1] in 1979 which established gender equality as

1. A/34/180

a guiding principle in international development cooperation. It stated that not only was it incumbent on member states of the United Nations to "eliminate all forms of discrimination and promote equal rights for men and women," but also that discrimination against women was "incompatible with human dignity and the welfare of society."

Through near-universal ratification of CEDAW and the implementation of other international legal instruments, treaties and initiatives, progress continues to be made at both the national and international levels to incorporate gender concerns into the development agenda to ensure that women's and girls' rights can be advanced on a practical, everyday level. Most of this progress can be assessed through the passage of new constitutions and national laws and policies based on the principle of gender equality, where women's human rights are established and acceptable as national standards.

However, progress has been slow and uneven. There is still much that needs to be accomplished in addressing women's concerns in all spheres of society, and to ensure their full participation as equal partners in the development agenda. In terms of economic and financial remuneration, exercise of political and cultural rights and the attainment of equal social status, women still lag far behind their male counterparts in most parts of the world.

Despite considerable efforts to address these critical issues in the last few decades, the data highlights significant gaps in achieving the goals, including through the Millennium Development Goals (MDGs). The most recent assessment of the MDGs[1] indicates that:

• Maternal health is one of the areas in which the gap between the rich and poor is most conspicuous and where maternal mortality in developing countries remains at unacceptably high levels;

• Disparities in access to care during pregnancy for women in developing countries falls far short of the goals, where women in the richest households are 1.7 times more likely to be visited by a skilled health worker at least once before birth than the poorest women;

• Lack of education is another major obstacle to progress and economic growth, particularly for women. Evidence suggests that poverty and unequal access to schooling perpetuate high adolescent birth rates, jeopardizing the health of girls and diminishing their opportunities for social and economic advancement;

• Contraceptive use is four times higher among women with a secondary education than among those with no education. For women in the poorest households and among those with no education, negligible progress was seen over the last decade.

In order to truly address the issue of gender rights, women's role and status in society need to be assessed in terms of inequalities in the family, the labour market, the political-juridical structure, and in the cultural-ideological make-up of the society. A further

1. Millennium Development Goals Report, 2010.

disaggregation of the information helps to reveal gender dynamics and other relations of inequality based primarily on social class, race, religion, and sex. An in-depth analysis of the values, norm and practices that are embedded in particular domains or social institutions is necessary in order to identify the "triggers" that foster inequality, reinforce power differentials between the sexes, or perpetuate violence against women.

Promoting the right of women and girls to participate in social and cultural life and protecting them from being discriminated because of their gender identity are prerequisites for their effective contribution to the elaboration of common values in the societies in which they live, which will in turn be the basis for the full respect of their rights.

The subject matter is vast. And efforts to address outstanding and critical issues of gender equality and rights therefore, pose immense challenges to the United Nations and the global community as a whole. As a culmination of intense deliberations and negotiations over the last few years, and in a historic move, the United Nations General Assembly voted unanimously on 2 July 2010 to create a new entity to accelerate progress in meeting the needs of women and girls worldwide called the UN Entity for Gender Equality and the Empowerment of Women – to be known as UN Women. The establishment of this entity is expected to bring together the resources and mandates to accelerate progress in meeting the needs of women and girls worldwide.

As the Secretary-General of the United Nations noted in his statement, the creation of UN Women "will significantly boost UN efforts to promote gender equality, expand opportunity, and tackle discrimination around the globe." The new entity will make it a priority to work on a comprehensive agenda for women, from ending the scourge of violence against women, to efforts to reduce maternal mortality rates. Agreements such as the Beijing Declaration and Platform for Action and CEDAW have undoubtedly helped to advance the issue of gender equality not only as a basic human right, but also in many aspects of society. They have also helped to refocus attention on the need to incorporate gender concerns into the MDGs that have already demonstrated enormous socio-economic ramifications.

It is expected that UN Women will have two key roles: It will support inter-governmental bodies such as the Commission on the Status of Women in their formulation of policies, global standards and norms, and it will help Member States to implement these standards, ready to provide suitable technical and financial support to those countries that request it, as well as forging effective partnerships with civil society.

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China's Court Culture and Judicial Protection for Human Rights

– Talk from Judicial Concept of Current China's Courts

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Respecting and safeguarding human rights is a cause that raises widespread concerns in today's world. Under circumstances of globalization, respecting and protecting human rights have become the theme of political development in the contemporary world, and the objective requirement of establishing China's Socialist System. For people in a country, all kinds of rights they enjoy are safeguarded by the laws in that country. The degree and ways of realizing these rights depend on the political, economic, cultural, and social development of the country. Therefore, different countries can not apply the same mode of human rights protection. The Chinese government has always attached great importance to safeguarding human rights, and promoted human rights protection by fully considering the differences in regions, nations and traditions of history and culture, of which, the differences of cultural traditions, cultural diversity, the different expressive forms of culture, etc. have a very significant influence on forming systems of human rights protection.

Since the reform and opening-up, China has achieved great accomplishments in modernization, and economic and social development has entered a new stage. The development of China and the improvement of people's lives have immensely promoted the development of cultural undertakings. Confronting the interactions between various ideologies and cultures in today's world, as the judicial authority enforcing state jurisdiction, People's Court undertakes important responsibilities of enriching and developing Socialist culture. During this process, the unique culture of China's courts develops gradually, becoming an essential part of advanced culture under Socialism with Chinese characteristics and the main content of socialist legal culture.

President of the Supreme People's Court Wang Shengjun says, China's court culture is "the combination of the mutual values, behavioral patterns, regulations and standards, and other related material expression formed in People's Courts during the long-term judicial practices and management activities." "Court culture originates and develops from judicial

practices, and also actively influences judicial practices."[1] And the guiding ideology of developing China's court culture is socialist judicial concept. Therefore, starting from introducing and analyzing the current judicial concept of China's courts, this article attempts to elaborate national conditions, especially how traditional legal culture influences the concept of judicial protection of China's human rights. It further explains the relationship between cultural diversity and human rights; meanwhile it makes a brief overview about recent achievements of judicial protection of human rights of China's courts.

I. The Current Judicial Concept of China's Courts Manifests the People-oriented Idea

Nowadays, against the background of world multi-polarization, economic globalization and society's informationization, China's social stability and economic development are more closely linked to the international social environment and changes of international economic situation, which creates new challenges for People's Court to maintain the overall situation of reform, development and stability. At home, on the one hand, as the economic system is reformed, the social structure changed, interests' pattern adjusted, and ideological concepts changed, social contradictions caused by the wealth gap, unfair distribution, social security, employment and other problems increase constantly, and many disputes flood in the courts. On the other hand, the masses seek for stability and development, and urgently desire for social justice and fairness, which set higher requirements for judges' qualities.

Confronting the complicated situations and tasks, the Supreme People's Court requires the courts at all levels to carry forward three key tasks, which are mitigating social conflicts, innovating social management, and enforcing the law with fairness and honesty. Meanwhile, it also requires judges to further deepen the understanding of socialist judicial concept, and play a more significant role in maintaining social justice and fairness, and respecting and safeguarding human rights in the judicial filed. In current work, it makes particular emphases on the following points:

Firstly, insist on affinity to the people of judicature, and emphasize service for the overall situation, and judicature for the people.

President of the Supreme People's Court Wang Shengjun stresses that affinity to the people is the essential attribute of socialist judicial system with Chinese characteristics. Affinity to the people of People's Court means judicial power of courts originates from the people, serves the people and is supervised by the people. He requires that "judges should treat people as their relatives, and provide judicial service for the people with the same emotion, same approach and same attitude," "judges should implement the people-oriented

1. See the first and other related pages of *People's Court Daily* on Jul. 6th & 7th, 2010.

idea when enforcing the law, and be fully responsible for parties."[1] An American scholar Tocqueville describes American judges, who enjoy outstanding background of knowledge and benign moral characters, as jurists with nobility in his book *On American Democracy (Vol. I)*. In China, judges should also possess noble professional ethics, solid legal knowledge and experienced judicial practices; however, the compliment for a Chinese judge is to call him "a plebeian judge."

Under the influence of this concept, many courts have made several beneficial explorations in judicial patterns and working manners, fully played the functional role of safeguarding human rights in the judicial field. For example, in accordance with the fact that there are a large number of farmers and poverty-stricken areas in Henan Province, Higher People's Court of Henan Province advocates judges to take off their robes, walk closely to farmers in remote areas, take the initiative to receive visits of the masses and listen to their needs with the purpose of facilitating the litigation of parties and making them spend less money and time. Higher People's Court of Chongqing Municipality proposes a concept of "the court of people's livelihood," advocates judges to frequently use the terms understood by the masses and apply methods accepted by the masses when adjudicating cases, and avoids the situations that judges just sit on the bench. It also encourages judges to carry out circuit trial based on the actual needs of grassroots and opens a court session in rural areas or mediates disputes in the fields, which is warmly welcomed by the masses.

The concept of "judicature serves for the people" has a deep cultural root in Chinese society. Advocating "cherishing the people" is the important part of the Confucian concept of human rights over the past more than 2,000 years. Confucianism starts from the doctrines of taking people as essence, which is "people are the most important element in a state, next is the state, least is the ruler himself," advocates that rulers should "be beneficial to the people," "cherish the people" and "care for the people." To some extent, the doctrines of taking people as essence in ancient China have an impact on easing social contradictions and maintaining social stability. This professional concept and actual practice that "judicature serves for the people" possessed by Chinese judges, are distinguished from that of the judges in western countries, which show that China's court strengthens the protection of citizens' rights to litigation and participation in the trial, and embody the judicial system with Chinese characteristics.

Secondly, establish a dynamic judicial concept, and emphasize the active role played by courts and judges.

Over 2,000 years ago, ancient Chinese philosopher Mencius believed that "Ruling by law alone is of little effect." Without the active role played by courts and judges, the law can

1. See the article "*Affinity to the people is the essential attribute and core value of the people's court*" on the fourth page of *People's Court Daily* on Aug. 24, 2009.

not be fully enforced, and the purposes of laws are difficult to be realized correctly.

Judicial activism in Chinese context has its special background and needs, that is, under the premise of following the rule of law and judicial disciplines, and based on the objective requirements of national situations and historical and social development, People's Courts and judges should provide active and efficient service, and maximize the unity of legal effects and social effects. Some scholars summarize it in three aspects: Firstly, the judicial activism of judges in legal senses, that is, the active judicature of judges in judicial process of an individual case. This activism is not a breakthrough of and violation to the current procedural law and procedural justice, but an active and even creative application of current law by the judges who are the subject of activism; the unity of legal effects and social effects are thereby achieved. China is a country with statute laws. Some legal provisions are very general, while new cases constantly emerge in trail practices. Therefore, judges are expected to creatively apply legal provisions under the premise of not violating the basic principles and spirits of laws. Of course, such application must be discussed and approved by the supreme trial organization-the Judicial Committee. Secondly, the judicial activism of courts in social senses, that is, as the judicial authority of Chinese society, courts bear the function of maintaining social stability and should enhance, expand or even increase some of its functions, so that judicial resources can play a bigger and better role in real context and system. For instance, courts fully play the functional role of trials and thereby actively participate in the comprehensive management of social order, and community correction work, etc. Thirdly, the judicial activism of courts and judges in special senses, that is, based on the disciplines of rule of law and Chinese reality, courts and judges make reforms and innovations in the aspects of institutional issues with constitutional significance involved in the judicial fields, which not only include efforts made by judges in an individual trial, but also efforts made by courts in an overall functional level, or even both.[1]

Thirdly, firmly establish the concept of "mediation first," and implement the judicial principle of "mediation first, and combined with trial."

The judicial mediation with the reputation of "Oriental Experience" can effectively resolve social contradictions and disputes, close cases, help repair the relationship between the parties, and achieve harmony. In recent years, the number of cases accepted and heard by People's Courts increase rapidly, according to the Annual Report released by the Supreme People's Court in July for the first time. In 2009, the cases accepted and heard by local courts across the country have exceeded 10 million pieces, amounting to about 11.37 million pieces and rising by 6.26%. The cases accepted and heard by the Supreme People's Court

1. Zhang Jun: *Judicial Activism: Choices and Approaches in the Chinese Context*, see the fifth page of *People's Court Daily* on June 23, 2010.

have exceeded 10 thousand pieces, reaching 13,318 pieces and rising by 26.2%.[1] Under the circumstances of prominent social contradictions, and the formidable tasks of maintaining the harmony and stability of our society, the inevitable choice of People's Courts is to advocate mediation when solving disputes.

Overall strengthening of mediation is also an inevitable demand of inheriting the outstanding culture of China and developing the excellent traditions of people's judicature. Our traditionally legal culture always stresses "peace is precious," pursuits the harmony of family relations, neighborhood relations and social relations, and emphasizes the role of moral cultivation, which require judges to take approaches of mediation and conciliation to resolve contradictions and issues, and achieve the purposes of closing cases and stopping conflicts. The ethic aphorism that "if parents love me, filial piety is not difficult; if parents hate me, filial piety is more virtuous." which originates from *Pupil Rules*, is cited in the decision of People's Court of Fengtai District of Beijing Municipality. It belongs to a part of Judges' send words, aiming to exhort the children to be kind to their parents based on the principle of family harmony, and wakes up kinship and eliminates contradictions.[2]

Fourthly, establish and promote the judicial core values of justice, honesty, and serving for the people.

Confronting the new situation of the increasing diversification of social value orientations, to identify the right value which leads the pursuits of life, value orientations and moral concepts of judges, the Supreme People's Court puts forward the judicial core values of justice, honesty, and serving for the people, which is in accordance with the qualities and aims of People's Courts; based on summary of the outstanding traditions of people's judicature, the disciplines and characteristics of courts' working, and the expectations and requirements of the masses. Among them, justice is the soul, honesty is the foundation stone, and serving for the people is the gist. All of them link to become a unified entirety, complement each other, reflect the value pursuit of Chinese judges and are the essence of China's court culture.

Justice is the core of judges' professional ideal. The Goddess of Justice in Ancient Greek Culture, with her eyes closed, holds a balance meaning justice in one hand, and a sword meaning fairness in the other hand, symbolizing selflessness and fearlessness, and maintaining justice and fairness with her heart. In Chinese ancient legal culture, unicorns are the symbol of justice and fairness. In legends, they have a pair of angry and staring eyes, and can distinguish right from wrong. When people have disputes, they use its horn to point at the party in the wrong and bring him into submission. Unicorns represent the judicial spirit

1. See the fifth page of *People's Court Daily* on Jul. 14, 2010.

2. Li Chen: *Citing Ethical Aphorisms of "Pupil Rules" in Verdict*, see the third page of *People's Court Daily* on Jul. 29, 2010.

of Chinese traditions, and reflect the value pursuit of justice and fairness. Nowadays, when you enter the huge court of Supreme People's Court, you can still see the fresco of unicorns embedded on the wall.

Honesty is not only the value pursuit of judges, but also the most basic and important moral requirement for politicians in Ancient China. Over 400 years ago, a county magistrate in the Jiajing Era (1522-1566) of Ming Dynasty, wrote: "my officials do not fear my solemnity but my honesty, and people do not fear my ability but my justice. People fear to neglect because of justice, and officials fear to deceive because of honesty. Justice engenders wisdom and honesty engenders prestige." And it was carved into a stone monument and embedded on the wall of Yamen Hall, as a motto to warn him for being an official. Nowadays, on the "cultural corridor" and "cultural wall" carefully created by many local courts in China, we can still find these two sentences – "Justice engenders wisdom and honesty engenders prestige."

II. Differences between Chinese and Western Traditional Legal Culture, and Their Influences on the Concept of Human Rights Protection

In a certain sense, a country's judicature is not only a manifestation of contemporary social relations, but also carries the memory of national history, and accumulation of culture.

In Western legal culture, people's respect of law originates from a simple faith, but there is no such soil for legal culture in China. The traditional society of China is a centralized society with power at its core. Under such a system, people show infinite respect to power, and lack of faith in law. Due to the combination of administration and judicature, judicature is in a state of being dominated and affected. On the other hand, under the rule of the Confucian civilization, which stresses moral supremacy, morality not only can guide administration, but also can replace administration, even the explanation and enforcement of laws can not be separated from traditional ethic morality. The society advocates integrity and harmony, so it has considerable revulsion to litigation. When resolving a dispute, people tend to apply the approaches which are similar to modern mediation and arbitration. In the form of judicial safeguarding of human rights, combinations of Chinese traditional method and Western rule of law, not only effectively safeguard human rights, but also resolve conflicts and maintain social stability.

Two thousand years ago, Confucius once said: "Severity and mercy complement each other. If combining severity with mercy, the political state can be stable." Later it is called the criminal policy of "temper justice with mercy," and has a profound impact on later generations. The criminal policy of "tempering justice with mercy" is the basic criminal policy of China, throughout the whole process of the criminal legislation, criminal judicature and punishment enforcement, and is the inheritance, development and improvement of

the policy of combination of "punishment and leniency" in new era, and the guideline of punishing and preventing criminals, protecting people, safeguarding human rights and implementing state laws by judiciary. This policy requires us to be in accordance with specific circumstances of crimes in a high-incidence period of criminal offences; we severely fight against serious criminal offences, and attack and isolate miner criminals. Meanwhile, we should educate, help and save the majorities, minimize the social opposition, promote social harmony and stability, and maintain national prolonged stability. For example, we mainly focus on educating minor criminals, supplemented by punishment, applying non-custodial sentences to them, and actively promoting community correction work.

Above-mentioned differences between Chinese and Western traditional legal cultures, and their impacts on the concept of human rights protection, require our full consideration in the trial practices, taking right measures and approaches, so as to strive for the best judicial effects.

III. The Status Quo of Judicial Protection of Human Rights of China's Courts

Adhering to the people-oriented idea, China's courts positively response the judicial concerns of the masses over the past years and effectively safeguard human rights according to law. The mainly aspects are as follows:

Firstly, the courts further implement the principle of "mediation first, and combined with trial." In June of 2010, the Supreme People's Court issued *Some Opinions about Further Implementing the Principle of "Mediation First, and Combined with Trial,"* which required courts at all levels to put mediation as the first choice of dealing with cases, gradually extended the range of mediation, conciliation and coordination from civil cases to administrative cases, privately prosecuting criminal cases, minor criminal cases, civil cases collateral to criminal proceedings, state compensation cases and execution cases, and build a cubic mediation system covering the overall fields of trail and execution. Meanwhile, courts at all levels should fully implement the principle of voluntary mediation and legal mediation between the parties. Some Opinions have guided and standardized mediation working of the whole country, and promoted scientific development of mediation.[1]

Secondly, the courts adhere to the criminal policy of "tempering justice with mercy." In 2009, courts at all levels concluded over 760,000 criminal cases and sentenced over 990,000 criminals. At the same time, adhering to the principle that courts should "legally adjudicate the guilty while firmly release the innocent," courts acquitted 1,206 criminal defenders who did not constitute crimes according to law, which ensured that innocent citizens exempted from criminal penalty.[2] In early 2010, the Supreme People's Court formulated and issued

1. See the front page of *People's Court Daily* on June 29, 2010.
2. Ibid

Some Opinions about Implementing the Criminal Policy of Tempering Justice with Mercy, and made concrete and clear requirements on how to implement this policy better. In March 2009, the Supreme People's Court, together with other relative state organs, formulated and issued *Some Opinions about Promoting the Rescue Work for Criminal Victims*, which concentrated on solving criminal victims' living and medical difficulties caused by lacking of economic compensations from criminals, and made the family who was damaged by serious crimes feel the warmth of the society.

Thirdly, the courts handle death penalty according to the law with fairness, accuracy, and prudence, aiming to punish crimes, and safeguard human rights. In June 2010, the Supreme People's Court, together with the Supreme People's Procuratorate, Ministry of Public Security, Ministry of State Security and Ministry of Justice, formulated and issued *On Some Problems of Examining and Judging Evidence of Handling Death Penalty Cases* and *On Some Problems of Excluding Illegal Evidence of Criminal Cases*, which put forward higher standards and stricter requirements for criminal cases handled by political-legal organs, especially death penalty cases, and ensured every single case could withstand the test of law and history.[1]

Fourthly, the courts safeguard people's right to be informed, right to participate, right to be heard and right to oversee. In December 2009, the Supreme People's Court issued *Six Provisions of Open Judicature*. It made clear rules about six aspects that needed disclosing to the public, which were filing, trial, execution, hearing of witnesses, documentation, review; and the court should also improve the instruments on-line system; improve the system of inviting NPC delegates, CPPCC members and people from all walks of life to audit the trial; establish a sound press release system at all levels of courts; improve the working mechanism of people's jurors; and deploy a new round of selection and training of people's jurors. In 2010, the courts have planned to elect over 54,000 people's jurors, and the total number is expected to reach 80,000.[2]

Fifthly, the courts attach great importance to playing the functional roles in state compensation cases, to safeguard human rights, relieve damages, and supervise the enforcement of the law. In April 2010, China's legislature revised the *State Compensation Law* and therefore, the right of legally obtaining state compensation can get more effective protection if citizens' legal rights are violated by public power. In 2009, the Supreme People's Court concluded the compensation and confirmed appeal cases about 230 pieces, the conclusion rate reaching 95%.

Sixthly, the courts energetically intensify to combat corruption and uphold integrity,

1. See the second and third pages of *People's Court Daily* on May 15, 2010.

2. Luo Shuzhen and He Xiaohui: *Improve and Perfect the Management System and Ensure to Play a Functional Role*, see the second page of *People's Court Daily* on May 15, 2010.

and comprehensively improve the quality of judges and court staff. In April 2009, the Supreme People's Court carried out a thematic practice named "People's Judges Serve for the People," and achieved significant results. Meanwhile, the Supreme People's Court announced reporting websites and phone numbers of violations of laws and disciplines to the public, and accepted better supervision. In addition, improving the judge's judicial capacity through different ways had also been mentioned as the priority among priorities. In September 2009, the Supreme People's Court launched training for presidents of People's Courts at intermediate and basic levels in National Judges College. So far, over 3,500 presidents have been trained.

Finally, what needs to stress is that the realization of human rights is the common goal and ideal of people throughout the world. Even though different countries and nationalities hold different understandings about human rights and apply different approaches to safeguard human rights, this fact will not hinder the pursuit of our common goal and ideal. Therefore, we are willing to have exchanges and dialogues with human rights experts from all continents based on equality and mutual respect. We communicate with each other, promote understandings, learn from each other, learn from others' strong points to offset our weaknesses, and respectively promote the pursuit of the cause of human rights protection.

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Cultural Rights and Cultural Diversity

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Culture is a very big concept, big enough almost to involve in all the activities of human beings and the tangible and intangible results caused by human activities. Therefore, it is very difficult to define culture in limited words.[1]

Although culture is not easy to define, it does not prevent us from discussing matters or phenomena related to it. This article is to discuss international human rights treaties on recognition and protection of cultural rights, and how the protection of cultural rights will influence the promotion of cultural diversity. Meanwhile, it simply talks about a country's obligations on recognizing, supporting, and protecting cultural rights and ensuring cultural diversity.

I. Cultural Rights are Recognized and Protected by International Human Rights Treaties

Many contents are related to cultural diversity in a series of international human rights treaties and normative documents, at both international and regional level. The relevance does not mean that international or regional human rights treaties directly recognize and protect cultural diversity, but objectively play a role of preserving and promoting cultural diversity through recognizing and protecting cultural rights and freedoms possessed by people, and eliminate extremely cultural erosion and cultural genocide policy. During the process of political, economic and cultural development, this relevance creates conditions for the continuity, prosperity and development of culture where people were born and grew up. Meanwhile, it creates conditions for the enjoyment and enforcement of other basic human rights which are based on or influenced by cultural diversity.

It is very important to understand and know the related international standards of human rights if we want to do the above-mentioned jobs better. These standards set by international human rights treaties are not only the premise for us to grasp the basic meaning of cultural rights, but also the valuable guidelines for promoting and protecting culture which should be

1. Stavin Hagan's article *Cultural Rights: Social Science Perspective*, discussing the foundation of cultural concepts from three aspects. Published on [Nor] Ed and other authors: *Economic, Social and Cultural Rights*, translated by Huang Lie, China Social Sciences Press. August, 2003.

done by us.

(1) International Human Rights Treaties on the Recognition and Protection of Cultural Rights

The origin of international human rights treaties on recognizing and protecting people's cultural rights mainly comes from Article 27 of the *Universal Declaration of Human Rights* issued by the United Nations (UN) in 1948, and Article 15 of the *International Covenant on Economic, Social and Cultural Rights* issued in 1966.

Universal Declaration of Human Rights has given substantive contents to "human rights" used in *United Nations Charter. International Covenant on Economic, Social and Cultural Rights* issued in 1966, which is one of the two conventions of the UN, and has become the international supervision on the implementation and compliance of human rights by UN, and the substantive basis of a series of measures and procedures developed by international supervision.[1]

Article 15 of the *International Covenant on Economic, Social and Cultural Rights* is the materialization of Article 27 of *Universal Declaration of Human Rights*, which specificly stipulates cultural rights and obligations of Member States on ensuring people's cultural rights.

The content of clause 1 of Article 15 is the same as Article 27 of *Universal Declaration of Human Rights*. It is clause 2 and 3 of Article 15 that should be stressed. Clause 2 stipulates: the steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture. Clause 3 states: the States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity. Clause 4 states: The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

Clause 3 of Article 13 of the *Convention on the Elimination of All Forms of Discrimination against Women* stipulates cultural rights possessed by women: the States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 31 of the *Conventions on the Rights of the child* stipulates the cultural rights possessed by children: States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to

1. [Aut] Novak: *Commentary of International Covenant on Civil and Political Rights*, translated by Bi Xiaoqing and Sun Shiyan, Joint Publishing Press, December, 2008, Page 2.

participate freely in cultural life and the arts. Clause 2 stipulates: States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, and recreational and leisure activity.

Article 5 (e) (vi) of the *Elimination of All Forms of Racial Discrimination* stipulates: everyone has the right to equal participation in cultural activities.

(2) Regional Human Right Treaties on the Recognition and Protection of Cultural Rights

Among the regional human rights treaties, Article 13 of the *American Declaration of the Rights and Duties of Man* and Article 14[1] of *the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* are related to the cultural rights we talk about. Article 13 stipulates: every person has the right to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress, especially scientific discoveries. He likewise has the right to the protection of his moral and material interests as regards his inventions or any literary, scientific or artistic works of which he is the author.

Article 17 of the *African Charter on Human and People's Rights* has a clause about participating in cultural activities, and an obligation on preserving African cultural traditions provided by Article 29. Article 17 stipulates: every individual shall have the right to education. Every individual may freely take part in the cultural life of his community. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State. The clause 8 of Article 29 states: to contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity. Clause 7 states: to preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society.

II. Cultural Rights are the Guarantee of Protecting and Promoting Cultural Diversity

(1) Cultural rights recognize and protect the existing cultural mode

Since ancient times, people from different regions and nationalities carried out various kinds of production, living and cultural practices throughout the world. In the long course of practices, differences in natural environment, natural conditions, religions and other aspects led to the diversified cultural modes in the current stage. Speaking from the large aspects, Chinese civilization, Christian civilization, Arabic civilization, and African civilization

1. Article 14 stipulates the rights benefited from culture, which is the same with Article 15 of *International Covenant on Economic, Social and Cultural Rights*.

are different cultural modes created by long-term practices of human beings from different regions. The large cultural mode can be divided into more cultural branches. No matter how small the cultural mode is, it's impossible for it to make uniform requirements to individuals affected by the cultural mode. Therefore, we should pay attention to the cultural mode relied by individuals' existence, and the relationship between individuals and the community they live at or the culture they belong to.

People, who live in different cultures, usually share the cultural traditions and history; have unique languages and values, and common conventions on production, life, weddings and funerals etc. These different and diverse civilizations are developed from the long-term living practices of people from different nationalities or regions. Although they can not be grasped or understood from the physical form, they are stable to some extent, but can change in different degrees with the changes of times at any time.

Cultures in different times and places have different manifestations. The concrete manifestation of such diversity is the characteristics of uniqueness and diversity of forming all groups of human beings and all societies. Cultural diversity is the source of communication, innovation and creativity. And cultural diversity is indispensable for human beings, just like biodiversity on maintaining biological balance. In this sense, cultural diversity is the mutual heritage of human beings, and should be recognized and affirmed by considering the interests of present and future generations[1].

Therefore, the recognition and protection of cultural rights has been one of the important contents of international human rights cause since World War II. However, recognizing and protecting cultural rights possessed by human beings, and ensuring and creating diverse culture by them are not only the recognition of the existing facts of cultural achievements created by human being in the past times, but also the prerequisite for creating a better cultural ecology, no matter it is in the period of before World War II, in the process of UN's protecting a series of human rights, including cultural rights, by developing human rights treaties or any stage in the future.

(2) Protecting cultural diversity needs joint effort from international community

From many above-mentioned provisions related to cultural rights in international and regional human rights treaties, cultural rights are not only basic human rights possessed by individuals, but also must be a kind of collective human rights. Cultural rights are independent to individuals and collective to nationalities, countries and social groups, which means in the process of cultural development, individuals have the right and freedom to participate in the cultural activities in their cultural communities, and share the interests of cultural progress brought by the progress of science and technology. It also means individuals

1. Article 1 of *UNESCO Universal Declaration on Cultural Diversity.*

have the right to fight against incidences of violating their cultural rights in the process of cultural development.[1]

From the perspective of historic development, only in modern times, several conflicts have taken place among different civilizations throughout the world. Among these conflicts, some civilization had once experienced devastating destruction, for example, Europeans launched genocidal invasion on American Indians and other races and caused many ancient civilizations in endangered situations. One of the purposes that Nazi Germany launched the World War II was to massacre the Jewish people who created Jewish civilization. The cause of global human rights rose after World War II partly due to preventing similar tragedies from happening again.

In the countries and regions with multi-ethnic groups or coexistence of multi-cultural modes, alternative lifestyles and values or lifestyles and values possessed by ethnic groups in marginal areas can easily be suffered or affected by national mainstream culture or values. In the process of economic development, communities and their buildings and cultural facilities which may have an essential influence on the unique lifestyles of a small number of people or individuals, can easily be affected by national development strategies and capitals. In this case, if we guarantee that minorities can live their original lifestyles and share the benefits brought by social development and progress, we will maintain and create diverse values or lifestyles through the recognition and protection of cultural rights.

III. Cultural Diversity is the Goal and Destination of Cultural Rights

Cultural rights will be protected as fundamental human rights. The purposes are to create a good cultural environment for people, and make individuals enjoy the calm and stability under the existing cultural mode, while ensuring that individuals do not have psychological and living discomfort caused by the rapid changes of the culture they belong to in the process of social development.

Therefore, there are at least three aspects about protecting cultural rights and seriously implementing the goals in practice. The first is to maintain the existing cultural mode, and ensure individuals under certain cultural mode can enjoy existing cultural results. The second is to provide support for individuals or group to reform existing cultural mode, make individuals have full chances of participating in the process of forming a new cultural mode, and let the cultural policies of communities, societies and countries reflect most people's appeals while not ignoring or even trampling on the interests of minority groups or minority ethnic groups. The third is to ensure that people have the full autonomy in choosing cultural behaviors, such as lifestyles, values and religious beliefs etc. in the process of social

1. [Aut] Novak: *Commentary of International Covenant on Civil and Political Rights*, translated by Bi Xiaoqing and Sun Shiyan, Joint Publishing Press, December 2008, see the contents of commentary of Article 27.

transformation.

The goals of understanding cultural rights are to create and ensure cultural diversity, make cultural rights in more fundamental position in the entire system of human rights, make cultural rights become one of the prerequisites of other human rights that can be better possessed by people; especially those basic human rights that are related to cultural creation and enjoyment, such as freedom of religion, freedom of expression etc.

Conclusion

For human rights at all levels, the State Parties bear three aspects of obligations, that is, obligations of respect, protection and realization. In the aspect of cultural rights, states bear the same obligations.

The obligation to respect requires states to recognize existing cultural mode and people's initiative and creativity is carrying out a series of cultural activities. It should minimize or even avoid negative impacts on people's existing lifestyles, religions and other cultural activities. The obligation to protect requires states to show effective protection, especially judicial relief when national or individual's cultural rights are threatened or improperly violated. The stipulation of the Article 2 of *the International Covenant on Economic, Social and Cultural Rights* can be deemed as the specific requirements of fulfilling obligations.

Article 2 of the *International Covenant on Economic, Social and Cultural Rights* generally stipulates the obligations of the State Parties in ensuring economic, social and cultural rights. The State Parties undertake to take steps, to the maximum of its available resource, with a view to achieving progressively the full realization of the cultural rights enunciated in Article 15 of the Covenant by all appreciate means, particularly the adoption of legislation measures. According to the stipulations of clause 2 of Article 15 of the Covenant, the steps to be taken by the State Parties shall include these necessary for the conservation, the development and the diffusion of science and culture.

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Cultural Diversity and Human Rights

Detta Anak Samen
Malaysia

1. Introduction

The Asian Development Model: A Model for the World?

Ten years ago, the international community pledged to make "the right to development a reality for everyone and to freeing the entire human race from want" under the *Millennium Development Goals* (MDGs). Under the MDGs, states committed to undertake to end poverty and hunger, achieve universal education, gender equality, improve child health, maternal health, combat HIV/Aids, ensure environmental sustainability and global partnership by 2015. Although ten years ago the pledges made by states may have seemed lofty ideals, in reality major achievements have been made towards realizing those goals.

Ten years ago, no one would have thought that it would have been possible to lift millions out of poverty. Spearheaded by China and India, the number of people living in extreme poverty has dropped dramatically and the average living standards have steadily improved. The MDG 2010 report states that the fastest growth and sharpest reductions in poverty continue to be recorded in East Asia. This year alone, poverty rates in China are expected to continue to fall to around only 5 percent. In 1990, 60.2 percent of people in China lived on less than a dollar a day. In 2005, 15.9 percent of people live on less than a dollar a day. In India, poverty rates have fallen from 51 percent in 1990 to an expected rate of 24 percent in 2015. In absolute terms, the number of people living in extreme poverty in India will likely to decrease by a whopping 188 million people.

It is difficult to adequately describe the importance of these achievements. On the ground, these statistics represent the billions of people who, within one generation now have access to water, food, homes, education, and all that is necessary for a life in dignity. These statistics also indicate that the respective state's development policies are headed in the right direction. However, are these policies the perfect formula for development? Although many people have been lifted out of poverty, so many more continue to live in extreme poverty. The goal to eradicate poverty and hunger at the moment still seems rather out of reach. With so much more to do, perhaps it is worthwhile to take a step back and rethink development concepts, models and approaches.

Intersections between Human Rights, Culture and Development

Human rights, culture and development are closely interlinked. Human rights and culture both represent a set of values. The difference between human rights and culture is that human rights represent values, ideals and principles that are universal in nature, while culture promotes a set of values, ideals and principles that may be relevant to only that community. The set of values in a certain culture largely determine the development path chosen – eg. indigenous peoples, based on their unique culture, religion and practices may opt for more community-based development rather than pursue the interest of single individual. The pursuit of development is essential to realize human dignity, the central concept of human rights. Thus, development must be rights-based: not only the objective of development must be rights-based, but the means used to achieve those objectives must also be rights-based.

Development: Out of Obligation to Whom?

Since the mid-1990s, human rights and development are seen to be closely linked and the crucial links between human rights violations, poverty, exclusion, vulnerability and conflict are recognized. Furthermore, discrimination and exclusion, lack of accountability and abuse of state power are recognized worldwide as structural causes of poverty.

Under international human rights law, states have varied degrees of obligations to promote development. One of the earlier declarations adopted by the UN General Assembly in 1986, the *Declaration on the Right to Development* recognizes the right to development as "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." *The International Covenant on Economic, Social and Cultural Rights* links the right to development with the right of self-determination and by virtue of that right, they may "freely pursue their economic, social and cultural development." More recently, the *UN Declaration on the Rights of Indigenous Peoples* in its entirety promotes the development of indigenous peoples in accordance with their needs, cultures and aspirations.

Despite the existence of such legal instruments, in practice states promote the development of its peoples less out of a sense of obligation to fulfill the requirements as enunciated under those instruments, but more out of a sense of obligation directly towards its own peoples. This is the essence of democracy – the state bears the duty to promote, protect and fulfill the aspirations of the very people who have given them the power, authority and mandate to govern.

In addition, the Organization for Economic Co-operation and Development (OECD) has been encouraging donor agencies to adopt a human rights-based approach to development and include human rights principles in their policies, mandates and principal modes of engagement to strengthen efforts towards equitable, pro-poor economic growth, justice

and accountability. As a result, many donor agencies have adopted non-discrimination and inclusive policies to ensure, for instance, persons belonging to ethnic, religious and linguistic minorities and indigenous peoples are specifically included in development efforts.

How Relevant is Culture in the Development Discourse?

The 1948 *Universal Declaration of Human Rights* (UDHR) provides a global framework for the civil, political, economic, social and cultural rights to which all persons are entitled without discrimination, as fundamental and unalienable liberties.

Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993: "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

The *Bangkok Declaration* adopted by Asian states in 1993: "Recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds."

With this, all Member States have a legal obligation to promote and protect human rights, but the debate about how this can be done within specific cultural contexts is still far from resolved and is often acrimonious, even in the most otherwise enlightened societies.

In our increasingly diverse societies, it is essential to ensure harmonious interaction among people and groups if we are to live together successfully, each according to his or her own aspirations. Article 22 of the *Universal Declaration of Human Rights* (UDHR) states that everyone has the right to social security and to the realization of the economic, social and cultural rights indispensable for dignity and the free development of personality. Cultural belonging is a source of self-definition and expression and is one of the primary sources of identity and personal development.

The protection of the cultural rights of all inevitably gives rise to the process of pluralism, bringing a multicultural world together through cultural education and knowledge transfer. Article 27 of UDHR promotes the right to participation in the cultural life of the community, to enjoy the arts and share in scientific advancements and its benefits.[1] This ensures the free flow of ideas and the flourishing of creative diversity and expression. This fully recognizes cultural identity while respecting human rights and fundamental freedoms.

1. These rights are also found in Article 15 if International Covenant on Economic, Social and Cultural Rights.

Article 30 of the *Convention of the Rights of the Child*, maintains that children of minorities and indigenous people have the right to enjoy their own culture, to profess and practise their own religion and language. In the same Convention, Article 29 recommends that education develops in a child the respect for his/her cultural identity, language and values and for the cultural values in which the child lives in.

A Rights-Based Approach to Culture: The Policy Imperative

A right-based approach to culture policy places emphasis on promoting and strengthening ways to provide broader access for the entire population and encourages public awareness of the importance of the protection and promotion of the diversity of cultural identity and diversity.

Policies to protect cultural rights share common features regardless of the specific cultural context, as the examples below illustrate:

• Recognize the diversity of cultural expressions and the importance factor that allows individuals and communities to express and share their ideals, beliefs and values and is an important source of intangible and material wealth;

• Promote plurality of the identities and cultural expressions of diverse cultures by taking into account that culture takes diverse forms across time and location;

• Incorporate international instruments that promote the free flow of ideas through the arts and use culture and cultural expressions as a strategic element in national and international development policy;

• Provide an environment that celebrates the importance and protects cultural diversity a fundamental freedom as proclaimed in the Universal Declaration of Human Rights;

• Enable interaction and the free flow of ideas experienced through cultural diversity through the nurture of constant changes and interactions between cultures;

• Protect the intellectual property rights in sustaining those involved in cultural creativity.

Harmful practices that are deemed to be “cultural” or “traditional” need to be eradicated eg female genital mutilation, patriarchal society in which women are discriminated against, child marriages, honour killings, slavery, apartheid. These are all practices which hinder individuals and communities from fulfilling their development potential. As rights-holders, individuals would be the primary drivers of development, with the state providing a suitable environment – participation, transparency, accountability, non-discrimination, mechanized through legislation and policies. Historical transformations have and will always require political commitment to determine development priorities which are compatible with human rights as public policy issue, and require constant stimulating and monitoring through political and legislative action.

2. Cultural Diversity and Human Rights – Malaysia's Achievements and Challenges

Malaysia is unique in the sense that it is a nation made up of Buddhists, Christians, Hindus, Muslims and people of many other faiths, and within this diversity is the convergence of various races consisting of Malays, Chinese, Indians and Indigenous people. With this, comes a myriad of culture, languages, festivals, food and customs. Therefore, the confluence of the many religions and races naturally bring about different views on how we identify and express ourselves.

In today's society, culture and religion both constitute a source of identity and expression, and a sense of belonging. Culture gives religion its language and religion gives meaning to culture. The symbiotic relationship between religion, expression and culture is particularly germane in Malaysia, a pluralistic society made up of individuals with different religious beliefs, cultures and creeds.

In Malaysia, the right to freedom of religion is protected by the Article 11 of the Federal Constitution reflects the spirit of Article 18 of the UDHR.[1] The Federal Constitution clearly provides that Islam is the official State religion; it also guarantees freedom of worship and thus accords Malaysians the right to practise their respective religions. In addition, the Section 295[2] of the Penal Code (revised 1997), Act 574, clarifies the offences against religion.

However, as an ethnically diverse country, Malaysia also faces many challenges. In recent years, religious issues have increasingly gained public attention in Malaysia. It has caused much uneasiness among the people.

Malaysia is also unique in that it has a dual system of judiciary: the Civil Court or the secular court system based on parliamentary law, and Syariah Court system based on Islamic law. Cases that involve both Islamic and non-Islamic matters become unwieldy. Problems commonly arise in inter-faith mariages involving conversion and which subsequently fail or are dissolved. In some cases, the spouse who converted may wish to revert to his/her original religion, which poses dificulty in determining who gets custody of the children. The application of Article 121 (1A)[3] of the Federal Constituion has been criticized by many sectors.

1. Article 18: Everyone has the right to freedom of thought, conscience and religion.

2. Penal Code (Revised 1997), Act 574: Section 295: Injuring or defiling a place of worship with intent to insult the religion of any class: Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or, with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment for a term which may extend to tow years, or with fine, or with both.

3. The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the syariah courts.

Malaysia also is witnessing increasing anxiety over the administration of religion-based rights. Mosques, temples and churches have been the subject of political intervention. There has been accusation of political high-handedness which, unless delicately handled, could undermine human rights as well as pose a major obstacle to national unity.

As a multiracial country, Malaysia recognises the importance of economic, social and cultural rights as much as the importance of civil and political rights. In this regard, the Government has been committed to a sustainable development of policies related to the promotion of economic, social and cultural rights within the country. The Federal Constitution guaranteed the cultural freedom and rights, which means any cultural policy must recognise and uphold these rights which are considered as one of basic human rights as reflects in UDHR article 27. To achieve real unity there has to be mutual respect and tolerance in matters relating to cultural and religious sensitivities, more so when these impinge on citizens' rights and freedoms.

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Cultural Diversity and Human Rights

Janet Love
South Africa

Introduction

In a culturally diverse world the recognition of a right to culture can often bring conflict with other recognized human rights. As states develop using a human rights based approach conflicts will emerge that must be responded to and managed in a way that both strengthens the human rights culture whilst respecting different cultures. The human rights agenda reflects the need to provide social arrangements that secure the freedom for a life of dignity – including social and economic rights. In a similar way, development policies attempt to enhance human capabilities by expanding choices and opportunities so that each person can lead a life of respect and value.[1] The two concepts are not in contraction and since the mid-1990s a human-rights based approach to development has emerged. This approach fosters development but with particular attention to protection, fulfillment and the promotion of all human rights. Development is no longer just about the outputs of the process itself. Thus the means must ensure the enjoyment and realization of human rights, not just the ends.

In addition to the rights based approach to development there has also been the recognition of a "right to development."[2] The right ensures every person and all peoples have the rights to enjoy economic, social, cultural and political development. It is currently non-blinding on states, however there are proposals to formally recognize it in terms of international law. Such a recognition would further oblige states to make national development policies that aim to ensure the realization of all human rights and also oblige all states to co-operate, on an international level, with a view to achieving the right to development. It would prevent states from using a lack of economic development as a pretext for human rights violations and ensure that human rights are integrated into domestic poverty

1. United Nations Human Development Report 2000 (http://hdr .undp.org/en/media/HDR_2000_EN.pdf)

2. Declaration on the Right to Development, Adopted by General Assembly Resolution 41/128 of the 4th December 1986: "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;" The right is also recognized in the African Charter on Human and People's Rights, adopted 27th June 1981, article 2: "all people shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind."

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reduction strategies. By recognizing the right to culture within a development context a number of conflicts can arises from time to time between certain cultural practices and other recognized human rights.

The right to enjoy one's own culture is recognized internationally.[1] In a increasingly global world in which market integration increases, new regional political are created, and advances continue in telecommunications and transport, the rights to enjoy ones culture is critical. However the right to culture is often highly contested as it does not always fit harmoniously with the many other recognized human rights. While all cultures share many core values of life, social order and protection from arbitrary rule there are rights that are not fundamental to some cultures despite being recognized as universal under the human rights agenda. Thus all societies, from tome to time, are faced with human rights dilemmas resulting from the clash between deeply held traditional cultural values and universally accepted human rights norms and standards.

South Africa has a huge range of cultural diversity being home to over 47million people of diverse origins, cultures, languages, and religions. Close on 79.5% of the population is of black African ancestry however this group is further subdivided into many diverse cultural and linguistic groups. South Africa is also home to large communities of persons of European, Asian and Racially Mixed descent. There are also an increasing number of non-nationals and refugees migrating from poorer neighboring countries and conflict torn parts of Africa. Formulating a human rights based approach to development, which guarantees the right to culture, amidst cultural diversity is not an easy task.

Since the end of South Africa's apartheid era in 1994, the government has actively worked towards improving the lives of its citizens through the adoption of a development state approach. The Constitution however places human rights at the core of this development strategy. The Constitution is notable for directly recognizing economic and social rights,[2] making it one of the world's most progressive Constitutions. However the challenge of transforming these rights on paper into the daily lived realities of those who are poor and marginalized is a continuous struggle. Within this context, issues of cultural diversity must also be addressed.

South Africa has guaranteed universal human rights by establishing a Bill of Rights. In addition, at an international and region level, South Africa has signed many of the recognized human rights instruments. Within this rich human rights framework South Africa recognizes

1. International Convention on Economic, Social and Cultural Rights 1966 article 15; Universal Declaration of Human Rights 1948 article 27; African Charter on Human and Peoples' Rights 1981 article 22.

2. The Constitution of the Republic of South Africa 1996, Charter 2 (Bill of Rights) s.26 (Housing), s.27 (Health Care, Food, Water, and Social Security), s.29 (Education).

traditional cultural practices, as long as they are consistent with the Bill of Rights.[1] There is also recognition in the Constitution of the institution, status and role of traditional leadership, according to customary law, as well as a traditional authority that observes a system of customary law.[2] This is an accommodation of customary law and not just a toleration and reflects a serious effort by South Africa to guarantee the right to enjoy one's own culture. In addition, the Bill of Rights also recognizes the right to freedom of religion,[3] to freedom of expression,[4] and to belong to a cultural, religious or linguistic community.[5] In addition to setting out a comprehensive bill of rights, the constitution also creates a number of state institutions to strengthen the constitutional democracy. One of these is the South African Human Rights Commission (SAHRC), established with a constitutional mandate to promote, protect, and monitor human rights in South Africa. However, this mix of legally entrenched guarantees and recognitions has led to a number of conflicts between universal human rights and customary tradition. These conflicts must be managed in order to ensure social harmony and unity within the context of a human rights based approach to development.

In recent years some traditional customary practices have attracted attention, being criticized for not conforming with South Africa's Bill of Rights. It is worth noting that these customary practices are often unwritten and are passed down by word of mouth. As a result there are many nuances in terms of understanding and practice amongst different communities. As development brings about a changing society there have been some instances where traditional customary practices have become distorted or changed placing the practice in direct conflict with the human rights guaranteed in the Constitution. Most often those who are affected are women and children.

This paper will reflect on two South African cultural practices, Ukuthwala and male circumcision, and demonstrate how the impact of the realization of the right to development has brought about a conflict between these practices and the human rights regime. The paper will further demonstrate the importance of effectively managing these conflicts in order that the process strengthens rather than weakens the establishment of a human rights culture in South Africa.

The Custom of Ukuthwala

Ukuthwala is an ancient practice that traditionally intended people of the same age who, in the normal course of events, were expected to marry each other and originated from

1. The Constitution of the Republic of South Africa 1996, Charter 2 (Bill of Rights) s.39(3).
2. The Constitution of the Republic of South Africa 1996, Charter 12 (Traditional Leaders) s.211.
3. The Constitution of the Republic of South Africa 1996, Charter 2 (Bill of Rights) s.15.
4. The Constitution of the Republic of South Africa 1996, Charter 2 (Bill of Rights) s.16.
5. The Constitution of the Republic of South Africa 1996, Charter 2 (Bill of Rights) s.31.

the Xhosa people in South Africa. The practice involves forcibly removing a girl from her parents' home in order to negotiate a marriage. In many cases the girl knew of the plan and the agreement between her parents and the groom's parents. The intending bridegroom, with one or two friends, went to the home of the intended bride, towards sunset or at early dusk, to forcibly take her back to his home. The intended bride pretended to resist and shedded tears as an insincere show of sorrow and reluctance, and it was regarded as a disgrace to appear to go willingly. Following the thwala (forcible removal) the intended bridegroom reported back to the girl's parents that the girl was safe with him and there was no need to worry. He would also indicate how much cattle he proposed to give as lobola (bride price) and how soon that could be done.

The lack of development in certain rural communities in South Africa has resulted in high levels of poverty. Some families resort to allowing their daughters to be abducted as a means if alleviating poverty. These have been media reports that Ukuthwala is currently used to abduct girls as young as 12 who are forced to marry men as old as their fathers.[1] Many girls live in fear of being abducted. More than 20 Eastern Cape schoolgirls are forced to drop out of school every month due to this practice[2] and the practice is now believed to involve the rape of the young girl after she is abducted.[3] Others are forced to marry men that are HIV positive.[4] The men involved are often motivated by the death of a wife or by the common misconception that sleeping with a virgin can cure HIV/AIDS.[5] In all these instances men are hiding behind and asserting their culture in order to abuse children. Ukuthwala amounts as practiced in this distorted manner to a serious breach of human rights. The young girls have the Constitutionally protected rights to protection from violence and coercion,[6] dignity,[7] and freedom and security.[8] The practice has a direct and indirect impact upon the child's development, education, life skills, and risk of exposure to early pregnancy and HIV/AIDS. In certain circumstances the practice may be a contravention of the Children's Act;[9] the Sexual Offences Act;[10] or the Recognition of Customary Marriage Act.[11] Prosecuting under

1. Ndabeni, Khanyi, *Schoolgirls being forced into early marriage in T'kei*, The Herald, (17th April 2009).
2. Ndabeni, Khanyi, *Schoolgirls being forced into early marriage in T'kei*, The Herald, (17th April 2009).
3. Hlongwane, S'Thembiso, *Ripping the veil off "Ukuthwala,"* City Press (24th January 2009).
4. Ndabeni, Khanyi, *Schoolgirls being forced into early marriage in T'kei*, The Herald, (17th April 2009).
5. Phasha N and Lucy Myaka, *A custom distorted: Beliefs about sexual abuse involving teenagers with intellectual disability at a rural setting in South Africa*, http://svriforum2009.svri.org/presentations/Phasha.pdf, 1.
6. The Constitution of the Republic of South Africa 1996, Charter 2 (Bill of Rights) s.28.
7. The Constitution of the Republic of South Africa 1996, Charter 2 (Bill of Rights) s.10.
8. The Constitution of the Republic of South Africa 1996, Charter 2 (Bill of Rights) s.12.
9. Children's Act (Act no.38 of 2005), s.12(2)(a): A child below the minimum ages set by law for a valid marriage may not be given out in marriage or engagement.
10. Sexual Offences Act (Act 32 of 2007) s.15: Sexual penetration with a child aged between 12 and 16 is an offence.
11. Recognition of Customary Marriage Act (Act 120 of 1998) s.3(1)(a): Both parties must be above the age of 18 and both must consent.

legislation however is often too late to stop the girl from human rights abuses. More must be done to prevent the abductions.

The practice of Ukuthwala has received much public attention and has been vigorously debated within the media. South Africa is legally obliged through the various international human rights institutions it has signed to "eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child."[1] It is however difficult to stop the practice as many arrangements are with parental consent and remain unreported. Parliament has recently discussed trafficking legislation and in some cases Ukuthwala may be viewed as trafficking or even abduction, however this sort of legislation will not prevent future breaches if human rights.[2] The South African Human Rights Commission has been actively involved in engaging with government, traditional leaders, and communities on the issue. Through the process of awareness raising the community is further educated about the issues that are at stake, including an understanding of the young girl's rights as well as the impact of sexually transmitted disease.

Ultimately though the root cause is the poverty of the families involved and deep seated gender inequality. In poor rural areas the lack of sufficient development has led to the cultural practice being perverted bringing it in conflict with human rights. By ensuring development in these rural communities and ensuring creating paths out of poverty there will be no demand for the current practice of Ukuthwala. At the same time there is also a need to debate if this ancient cultural practice can be saved with the current human rights dispensation.

The Ritual of Male Circumcision

The Xhosa tradition of male circumcision is far older than recorded history. The initiation ceremony marks the transition from boyhood to manhood and takes place at initiation schools. The actual circumcision is performed by traditional practitioners. In Xhosa tradition an uncircumcised adult male is regarded as a boy and cannot inherit or marry. The circumcision brings about full membership in the community and a higher standing in society. Being circumcision allows the male to sacrifice to the ancestral spirits as it is considered only men can speak with the ancestors. Boys are usually initiated from around the age of 18.

However the tradition has attracted attention in recent years with some serious human rights concerns being raised over how some of these initiation schools are run. Each year there have been instances of genital mutilation, amputation, and even death resulting from

1. African Charter on the Rights and Welfare of the Child, Article 21.
2. "Victim empowerment programme, Ukuthwala: Department briefings," Department of Justice, 15th September 2009.

botched circumcisions and septicaemia. For example, by July 2010, there had been 39 deaths in the Eastern Cape initiation schools[1] and more than 400 boys, young and old, have died since 1994.[2]

The causes of these deaths can be linked to how the initiation is practiced. During the initiation the boy must undergo a period of seven days exclusion during which he is only allowed to drink muddy water and eat salt-free food. As a result dehydration and pneumonia are also major causes of death. The stigma of not completing the ritual, and therefore not becoming a man, means that initiates resist hospital admission despite infections or dehydration during the period of exclusion putting their lives at risk. Furthermore, although the initiation takes place in secret and is not supposed to be discussed outside, it is believed that gratuitous beatings and other forms of physical abuse take place. Another part of the ritual involves binding of the penis after circumcision and is described by survivors as torture.[3] This is a serous breach of the boy's right not to be tortured or have inhuman treatment inflicted upon him.[4] It is also a breach of the right to be treated with dignity[5] and as a child to be protected from maltreatment, neglect, abuse, or degradation.[6]

However development, which brings about many changes to society, has also affected the way the custom is practiced. The effects of urban migration and access to education for young males have meant a change in the custom as increasingly it is only when they return home during the summer or winter break from school that the initiation can take place. As the weather is at its hottest in summer there is an increased risk of infection as well as dehydration, and in winter there is increased risk of pneumonia. It is not unusual for boys as young as 13 to be initiated.[7] This is putting the young boy's right to life and as children to protection from maltreatment, abuse, and neglect.[8] To ensure a human rights based approach to development a managed response to the changes in the custom is needed.

In order to address these issues the states has adopted a right to health approach passing provincial health legislation which, whilst recognizing and respecting the cultural practice, regulates the medical aspects of initiates. The boy is required to see a medical practitioner before the initiation to assess the fitness for the procedure and there is a minimum standard of hygiene that the traditional practitioners must meet. Non-compliance with this legislation

1. *Health Department to support initiatives to curb circumcision related deaths*, National Department of Health, 8th July 2010.
2. *Boys hoping to gain their manhood lose it – forever*, LA Times, 23rd August 2010.
3. *Boys hoping to gain their manhood lose it – forever*, LA Times, 23rd August 2010.
4. The Constitution of the Republic of South Africa, Chapter 2 (Bill of Rights), s.12.
5. The Constitution of the Republic of South Africa, Chapter 2 (Bill of Rights), s.10.
6. The Constitution of the Republic of South Africa, Chapter 2 (Bill of Rights), s.28.
7. *Boys hoping to gain their manhood lose it – forever*, LA Times, 23rd August 2010.
8. The Constitution of the Republic of South Africa, Chapter 2 (Bill of Rights), s.11 (Life), s.28 (Children).

however and the establishment of illegal initiation schools does not appear to have had a significant impact on decreasing the number of deaths.[1]

While development has changed the custom and led to legislation there are still rural communities where a lack of development has meant young boys are still vulnerable to human right abuses. The initiation usually costs between R3,500 and R5,000 forcing some parents to send their sons to illegal circumcision schools where some surgeons are unqualified.[2] There is also a serous lack of understanding about the dangers involved. In one study 67% of participants were unaware of any risks associated with traditional circumcision and 63% preferred a traditional circumcision rather than medical practitioners.[3] Only by improving the economic situation of those most at risk as well as educating them on the dangers can the custom continue alongside an enjoyment of human rights. The Department of Health provides training workshops, sterile material, and awareness campaigns however it must do more to ensure that the boys, and the parents, understand the dangers involved in traditional circumcision. Community education and awareness rising on the issue should be allocated a prime place in the struggle as knowledge of the dangers involved is still insufficient.

Conclusion

The recognition of the right to culture will at times bring conflict with other human rights, as South Africa is experiencing with Ukuthwala and ritual male circumcision. The human rights approach to development though must ensure that the culture is accommodated as far as is possible in order to ensure that the individuals maintain the right to enjoy one's own culture. If human rights abuses occur then it is important to respond in a constructive manner that respects the culture. It will often be the case that development policies aimed at alleviating poverty will tackle the root causes of these conflicts. However legislation and preventative measures may be necessary to ensure there are no human rights abuses in the meantime.

While development within a human rights structure is sought after, it is important that to ensure that no person becomes a victim of human rights abuses arising out of changed cultural practices caused directly by the impact of development. Those marginalized by poverty are the most vulnerable to human right abuses and thus it is no coincidence that

1. Meissner, Ortrun and David Burso, *Traditional male circumcision in the Eastern Cape – scourge or blessing?*, *South African Medical Journal*, 2007, vol. 95, no.5, p. 372.

2. *Community perception of traditional circumcision in a sub-region of the Transkei, Eastern Cape, South Africa's*. SA FAM Pract 2005, 47(6), p. 58.

3. *Community perception of traditional circumcision in a sub-region of the Transkei, Eastern Cape, South Africa's*. SA FAM Pract 2005, 47(6), p. 58-59.

cultural practices that become distorted result in poor women and children being victims. As South Africa has experienced from Ukuthwala, it is within the poorest rural communities where the girls are most vulnerable.

It is important to remember that as areas develop the customs themselves will change and adapt to the change in economic and social conditions, as has happened with the ancient ritual practice of initiation. These changes must be understood and accommodated to ensure that development itself is not a factor causing further human rights abuses.

The right to development and the human rights based approach to development must make sure that traditional customs are respected and allowed to development to ensure that the right to culture itself is not lose amongst such cultural diversity.

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Promotion and Protection of Human Rights in a Diverse World

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Let me begin by saying how truly delighted I am to participate at the 3rd Beijing Forum on Human Rights. I wish to express my profound appreciation to the China Society for Human Rights Studies (CSHRS) for organizing this important event and to the government and people of the People's Republic of China for the hospitality. I must add that, the excellent arrangements that have been put in place for this meeting, eloquently attest to the consistency and unflinching commitment of the Chinese Government to the propagation and sustainability of the ideals of promotion and protection of human rights while respecting the different cultures and civilisations existing in today's world.

In the increasingly globalizing and inter-dependent world of our time, the dedication of the theme of cultural diversity as one of the sub-themes of the 3rd Beijing Forum on Human Rights could not have been more timely and appropriate. Over the years, the world has not only been faced with the challenge to search for the true essence and meaning of the cultures, and the rights and beliefs of its nations and peoples, but also that humanity has been confronted with the task of dealing with increasing distrust and divisiveness among peoples and between nations. At no time in the past, have the peoples and nations of the world, been more confronted with the daunting task of reconciling the intricate web of human relationships within the context of the principles of the *Universal Declaration of Human Rights* of 1948, which remains, till date, the most enduring framework for the promotion and protection of human equality, dignity and freedom.

In our collective efforts to defend and institute respect for cultural diversity and human rights into the international system, dialogue and cooperation are crucial elements to achieve that goal. Respect for the diversity of cultures and tolerance, in an atmosphere of mutual trust and understanding is one of the veritable measures which set the state for fostering international peace, security and progress. Therefore, I have the conviction that all members of the international community need to support initiatives which protect and promote common understanding of human rights standards, thus enriching the universality of these rights. It is pertinent, at this juncture, to recall the *Vienna Declaration and Programme of Action* of 1993 which struck the right note by categorically stating that *"all human rights are universal, indivisible and interdependent,"* while also acknowledging and reaffirming the notion of national and regional peculiarities, cultural and religious backgrounds as both

relevant and relevant to the development and enjoyment of human rights.

Needless to say, cultural diversity is a complex concept. No society, regardless of its geographic location or level of socio-economic development, can be said to be represented by a single and comprehensive set of standards covering all social matters. Tradition and culture are always in constant mutation and are viewed and interpreted in different ways by various actors in society. There exist differences, and, in some cases, fundamental differences in the way culture and values are to be seen depending on the historical moment, society or, at any moment, between conservatives and progressives. All civilized societies are under obligation to consider it a matter of priority to unequivocally proselytize the idea of cultural diversity for the benefit of societal harmony and respect and dignity of the human person.

In pursuit of the appreciation of human rights and the import of cultural diversity, the media as well as national cultural institutes, have important roles to play. They must, indeed, act as veritable instruments to universalise ideas on ethnic, religious and racial tolerance. They must be the propagators of the need to respect cultural diversity and the promotion of the right to cultural development. They must champion the inter-linkages which exist between the respect for these essential rights and the pursuit of socio-economic development. They must be at the vanguard in calling upon the international community to foster enduring cooperation in this regard.

In today's world, there is no longer any wisdom in holding on to misguided notions and policies, which merely seek material progress of societies without regard or any consideration for their cultures – the very soul of their existence. Multiculturalism is the bedrock of a vibrant and dynamic society, which allows for creativity and innovation, contributing to the richness of the tapestry of values, traditions, beliefs and ways of life of our peoples. We all owe it a duty to future generations of mankind, to develop a framework of action that will advance the course of inter cultural dialogue and promote multiculturalism. With such a machinery in place, we would then be better able to continually analyse ways and strategise on policies to promote respect and understanding between peoples and nations across all divides – social, economic and cultural.

Let me conclude by affirming that culture is something valuable. It gives people an identity, a feeling of belonging, of tradition and history. Therefore, respect for cultural diversity should indeed be the rule. Anything other than that will be a betrayal of the philosophy of human rights. The only exceptions to this rule are those practices which violate human rights. Culture can only benefit from tolerance, non-discrimination, freedom of religion and other values inherent in human rights. Cultural relativists and others who want to protect culture should therefore embrace rather than dismiss human rights.

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Cultural Diversity and Human Rights

Tsend Munkh-orgil
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In the long history of human development and its' evolution, various cultures and civilizations have been flourishing throughout regions and continents creating distinctiveness and various aspects of human society. In this way the formation of a culture is an investment for cultural heritage for the future generations and becomes a priceless item of the world history. As the culture of every community living around the world is being continuously evolved into various forms in regard to the essential influencing factors, such as the region, surroundings and aspirations. Thus, the process of cultural evolution has dispersed a large variation in diverse communities resulting in creation of differences that tend to increase with time and distance. This diversity is the foundation for its uniqueness and further development.

The range of cultural diversity are expressed in a variety of things starting from linguistic dialects to tradition or rituals that are very specific and one of the kind. Seeing that diversity is an item of common value and pride of each community, it is protected and further developed by its members, as a vital constituent of their dignity.

Since the process of creating a culture extends to many centuries and ages, it is certainly a precious piece of the world culture and a wealth of the concerned community or society. Nonetheless, it is threatened by the era of technical advancement and progress. The distance between diverse cultures has been shortened and even erased, in some instances. This draws together people of totally different culture and exposes their cultural diversities and makes interaction between those cultures. At this point, negative effects of this phenomenon directs towards inclination for domination or rejection of one culture by the other by which complications in peaceful coexistence is put under intimidation, therefore, leading to xenophobia, violence and abuses of human rights.

As human rights are "rights and freedoms to which all humans are entitled to," the *Universal Declaration of Human Rights* provides that "all human beings are born free and equal in dignity and rights 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." This means that cultural diversity must be not the basis for discrimination and other forms of human right violations. They are based on the principles of universality, non-

discrimination and inalienability. Thus, human rights shall apply equally to all regardless of their cultural diversity, as mentioned before vital constituent of human dignity. Adopted by the whole world, *the Universal Declaration of Human Rights* affirms and declares non-discrimination on the basis of core components of a culture, moreover, rights and freedoms in this regard have been enshrined in other instruments of the international law, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

In some countries the spread of intolerance related to cultural diversity becomes the ground for violence and discrimination – violations of fundamental and human rights. Therefore, recognition of cultural uniqueness, diversity and tolerance is the essential component of the modern world. Unfortunately, we have seen enough the consequence of the cultural intolerance during the Second World War. Intolerance for the representatives of another culture produced the denial and rejection for recognition as same human beings and, furthermore, violated the most primary right of all – right to life of millions of innocent people. The terrible genocide committed during the war for so-called protection and purification of own culture cannot be justified in any possible way. It is a crime against humanity and cannot comply with any morals and ethics. In consequence of these brutal events, rigid measures have been taken by the international community for prevention from these forms of conduct against human rights.

At present, we have a firm system based on the Charter of United Nations for prevention and protection of possible human rights violations in the face of conflicts and war. The international law also provides the guarantee and safeguard of core human rights. Moreover, tensions arising from the cultural diversity is softened and eased through international dialogues. *The Bill of Rights* composes foundation for numerous international treaties and conventions for not only the protection and promotion of human rights but also for preservation of cultural diversity, such as the *Universal Declaration on Cultural Diversity* and the *Convention on the Protection and Promotion of Diversity of Cultural Diversity.*

According to the *Universal Declaration on Cultural Diversity*, the protection of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It refers to the commitment of human rights and fundamental freedoms toward the vulnerable groups. It is essential in the perspective where expressions of cultural diversity are vanishing as the extinction of rare species.

The Bill of Rights reaffirms that no discrimination should take place in any circumstances, especially on the grounds of diversity of cultural expression. Human rights shall be implemented equally for everyone regardless of their cultural diversity, and violations that may occur must be suppressed and prosecuted. The most common groups vulnerable in relation to preserving cultural expression of their community are indigenous

people, ethnic minorities and migrants. These people are very much exposed to various forms of xenophobia, violence and other forms of intolerance. Human rights are universal and have the same meaning in every corner of the world, and the context of abovementioned people should not be an exception.

In this context, the above international documents become a very important tool for balancing the spread of cultural expressions cross regions and countries and for their protection and preservation from the threat of extinction or serious impairment.

As for any country, preserving own cultural heritage and ensuring the rights of individuals without any discrimination in relation to their cultural diversity is the key point for development. As a result, promotion of own cultural diversity, heritage and expression builds the value of the country's development. On the other hand, equal participation of people in relation to their cultural diversity establishes the foundation for ensuring human rights without any intimidation.

In 1992, Mongolia has enshrined in its Constitution the internationally adopted human rights principles of non-discrimination. The article 14.2 of the *Constitution of Mongolia* states that "no person shall be discriminated against on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation and post, religion, opinion or education. Everyone shall have the right to act as a legal person." This is a provision ensuring implementation of human rights through acceptance and recognition of cultural diversity.

Mongolian has ratified and acceded to over 30 human rights treaties recognizing cultural diversity. In particular, it recognized the significance of the *Universal Declaration on Cultural Diversity* and acceded to the *Convention on the Protection and Promotion of Diversity of Cultural Diversity* on 15 October 2010.

As cultural diversity is expressed in various forms of cultural heritage of humanity but from the perspective of human rights it refers, inter alia, to individual's dignity. Recognition of cultural diversity consists of respect to the interests of groups of diverse culture, provision the equal opportunity for participation in the social life and for preservation of the specific diversity, legal protection for centuries old diversity of cultural expression, promotion at international and national level.

The Constitution of Mongolian ensures non-discrimination in any of its forms along with other national legislation deriving from it. The State holds the policy to integrate culture in policy development, in accordance with the provisions and commitment set in the above Convention. Moreover, other documents, such as the Comprehensive National Development Programme based on the Millennium Development Goals, National Action Plan for Human Rights, Government Action Plan, are making up the framework for recognition of cultural diversity and non-discrimination, proving the equal opportunity in enjoyment of human rights and freedom in respect to own diversity in cultural expression.

In regard to measures focusing on development of cultural industries and activities to access the means of production, dissemination and distribution of cultural activities, goods and services, the State is supporting of Small-Medium size enterprises aiming at producing and developing articles of diversity of cultural expression. Therefore, a separate State Agency was established in 2008 to support the small and medium size enterprises. This is very much essential for promoting cultural production, disseminating own cultural diversity and heritage at the international level.

The ethnic minorities of Mongolia compose around 5.4% of the whole population. The main two representatives of these minorities are Kazakhs and Tsaatans (Reindeer people). In order to ensure the rights of citizens to learn and receive information on own mother tongue new legislative frameworks have been introduce through adoption of *Law on Education*, *Law on Pre-school Education*, *Law on Primary and Secondary Education*, *Law on Tertiary Education*. In addition to this, policy documents, such as *National Action Plan for Improvement of Child Development and Protection*, *Programme Establishing Child Friendly School Environment*, have been adopted and implemented. Additionally, special programmes have been developed to ensure the exceptional needs of Kazakh children in relation to their education along with programmes to maintain reindeer herding and improvement of livelihood. As a result, most of the children of Kazakh and Tsaatan minorities living in Bayan-Ulgii and Khuvsgul provinces are receiving education in Mongolian, Tuva and Kazakh languages. Thus, in ensuring the right to preserve own cultural diversity, the State is broadening the support to minority children attending tertiary education facilities in the form of scholarships and subsidies for accommodation and tuitions.

As cultural diversity is linked to livelihood of the community, retaining own livelihood is crucial for preserving cultural diversity. Reindeers are undeniable element of Tsaatans. Thus, in the framework of the programme to maintain reindeer herding and improvement of livelihood, State is holding the policy protecting the genetic fund of the reindeers, promoting the reproduction and selection, introducing system of promotion of reindeer herders.

According to the article 8.2.7 of the *Law on Public Television and Radio* "to ensure equal access to information for the public along with social groups, such as minorities, women, children, persons with disabilities," the Mongolia National Television and Radio is broadcasting programmes in Kazakh language during the weekends. This is one way of ensuring the right to receive information on own native language, on the other hand, it is a very important promotion of minority culture and language. Moreover, cultural festivals and celebration for promotion of cultural diversity of ethnic minorities are held, such as Regional Cultural Days, Festival of Thousand Reindeers and Festival of the Eagle.

Civil society organizations also plays significant role together with the State initiatives for advancing and promoting cultural diversity. Around 15 of such organizations are bringing

contribution to preserving the unique cultural expressions and encouraging their further development.

As provided in article 4.2 of the *Law on Relation between the State and Religion* "the State affirms for the solidarity of Mongolian people and respect for historic and cultural heritage that Buddhism is a religion of the majority and this shall impede people having other religion," Mongolia recognizes all other religions and their practices. Where the majority of the population practices Buddhism, there are also Muslim Kazakhs, Tsaatan people practicing Shamanism, and all these representatives are living in peace and harmony without any conflicts and confrontations.

In order to promote respect for the diversity of cultural expressions and raise awareness of its value at the international levels, Mongolia has been holding various cultural events in around the world giving the chance to other culture to know more about each other and creating foundation for mutual understanding. An example of this can be seen during the Shanghai International Expo. Furthermore, in cooperation with foreign embassies and associations cultural festivals are taking place within Mongolia, providing a glance to the cultural diversities of the world.

(The author is Member of the State Great Hural (Parliament) of Mongalia.)

Cultural Diversity and Human Rights

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At the outset, kindly allow me to take up this unique opportunity to congratulate both leaders and peoples of the Kingdom of Saudi Arabia and the People's Republic of China, for the remarkable extent of the strategic friendship and cooperation between the two countries, as well as the care of both leaderships to continue and develop these relations. Even though the relations between the Kingdom and China date back to a long time ago, the last 20 years of the course of the Saudi-Chinese relations were thrived with mutual cooperation in all aspects. They were culminated by the visit of the Custodian of the Two Holy Mosques, King Abdullah Bin Abdel Aziz to China in 2006, on his first international visit after being inaugurated a Ruler of the Kingdom. This visit signified and emphasized the importance of the relations between the two friendly countries, and the need to promote these relations, which had been actually realized, as this historical visit gave a strong motive to the mutual relations, upgrading them to advance prospective of economic partnership between the two countries. Furthermore, the two visits made by his Excellency President of the People's Republic of China, Hu Jintao, to the Kingdom in 2006 and 2009, had the greatest effects on asserting the depth of the relations and too many interests that combine between them, as well as the care of China to reinforce its relations with Saudi Arabic as an important partner. This is of course, due to the pioneer status the Kingdom of Saudi Arabic is enjoying among the Arab-Islamic World, as well as the political and economical weight of the Kingdom, which contributes to the maintenance of the international security, peaceful coexistence, the common interests among the peoples of the globe, and strengthening the considerable human values.

The cultural diversity forms a motivating power of development, not only on the economical growth level, but also being a dignified human life means. This is a major stipulation in the cultural conventions, which are deemed a solid pillar to enhance the cultural diversity throughout the world. Accordingly, this cultural diversity is an urgent need for sustainable development. At the meantime, acceptance and acknowledgment of the cultural diversity contributes – through the innovative use by a world living a cognitive, and media revolution, as well as a tremendous development in the information and communication technologies in particular – in achieving the mutual respect, harmony, understanding and

cooperation among the states and peoples of the world.

It is not possible to envisage a constructive cooperation or true cooperation among the different followers of cultures and civilizations, without acknowledging the principle of cultural diversification, and the necessity for cooperation on the common dividers among the humankind. The civilization struggle is not an indispensable fate, because violence, ignorance about facts, and fear of the other, are not at all predestined matters. On the contrary, they are yields of the raising and culture upon which the individual grows up, which in turn imprints his/her behaviors and reactions. Therefore, there is no alternative or substitute of dialogue to maintain the cultural diversification, and enhance the noble human values. The humans are required, regardless of the multiplicity of their beliefs, to be familiar with living cooperatively together, based on a mutual and free will.

Acknowledgement of the cultural diversity and work toward maintaining it within the framework of an international policy founded on dialogue, fair dealing, kindness, and expelling the dominance, power and injustice, imply, at the same time, condemnation of violence and terrorism of all kind and source. In addition, it respects the life, dignity, freedom, and the rights of occupied nations to self-determine their destinies and defend their rights; and, distinction between what is a kind of terrorism and that of the legitimate resistance.

On the other hand, cultural diversity is one of the bases of the success factors of development, mutual understanding, peaceful coexistence, and walk toward the economical, cultural and social development. It also forms a correction to the differences and distortion taking place in the current world order; a respect and preservation of the environment; a safeguard of the corporeal and incorporeal human heritage of all the nations, which cultural and civilization heritage is subjugated to attempts of deformation, embezzling, obliteration, devastation and confiscation; combat against poverty and upgrading the levels of growth and production; establishment of democracy; and expansion of the popular participation in decision taking on the different sectors and aspects.

At this very important point of the stage, characterized by the increased dependency of the cultural industries on the new media and communication technologies, which became a strong director of the artistic creativity, time is quite due to lessen the burden of the poor countries with respect to their indebtedness; so that they may allocate additional resources to support the fraught with incoming cultural products from the rich countries. Further, this may enable these poor countries to diminish the gap of the digital knowledge between them and the rich countries, so that the poor countries become also culture producers, and contributors in building and enriching the human civilization. That is simply because the human culture is not any one's monopoly.

The common will orients all of us to contribute to the bright and prosperous future

making for the humanity. Moreover, our strong grasp of the humanitarian values aspired from the spirits of human civilizations and cultures over the consecutive ages, necessitates us to expand multiple efforts on communication and assertion of non-obsession of any civilization or culture in terms of wisdom vocabularies. From this stems the importance of the emphasis that the cultural diversity and civilization consequence is an enrichment of the live human thought, a basic pillar, and a maintenance of the human honor and dignity, the human that Almighty Allah assigned to the earth in order to build and make all good things over it, not to destruct it; and to enable build a common human civilization that reinforces the human-human partnership. This urges us to establish various international forums distributed over more than one area and region, based on initiatives from institutions and organizations of mutual interest, and from universities and cultural academic establishments devoting their efforts to spread over the values of dialogue and peaceful coexistence; and pave the roads to realize more proximity and greater understanding; and reinforce the humanitarian links among the nations and peoples. It is very important to be careful that this dialogue will be built on the mutual respect foundation, safeguarding the principles of right, justice and fairness, supporting the endeavors of the international community toward deepening tolerance and establishment of security and peace, as well as the comprehensive cultural, civilization coexistence among all the humans. Our world is nowadays passing through major changes that impose us, much more any time ever, to proceed forward with this partnership through sustainable dialogue to reinforce the peaceful coexistence far off away from negative impacts or regional or international tension; and through a series of mutual humanitarian contributions built on the international common values and principles among them; through making use of the common scientific accomplishments and conscripting the same toward the human service, to solve the challenges encountered by the humans, such as ignorance, poverty, disease, absence of justice. Furthermore, Asserting the universal values and principles which should be promoted and ingrained in the consciences and behaviors, is a common humanitarian heritage. All these cannot be realized unless made through the cultural diversity, which in turn could be conducted through a real dialogue among the followers of cultures and religions.

Since the early establishment of the Kingdom of Saudi Arabia at the hands of late/the Founder Imam, his Majesty Kind Abdel Aziz, may Almighty Allah rest his soul in peace, the cultural diversity through harmony, understanding and dialogue with the other was one of the basics of its political and cultural path. Nowadays, under guidance of the Custodian of the Two Holy Mosques, King Abdullah Bin Abdel Aziz, and his Royal Highness, Prince Sultan Bin Abdel Aziz, and HRH, the second Deputy, may Allah protect and support them all, the Kingdom's interest emerged on the national dialogue to revitalize the importance of the Islamic Sharia (Canon) as a blatantly bright path for dignified life in this country, by

which ruling people is made, and to its tolerant principles we resort in our life particulars, and to solve all our disputes of all the aspects of daily life. It was also an assurance and establishment of the national unity rules upon which the Kingdom of Saudi Arabia was founded, accepting the dialogue as a base for understanding among all the citizens.

To underpin and highlight this trend, King Abdel Aziz Center for National Dialogue was established in 2004, which is given a special attention and followed up by the Custodian of the Two Holy Mosques, King Abdullah Bin Abdel Aziz.

This center works toward activation of the dialogue and applying it on the real grounds. The foundation of this Center and the national mission is entitled to serve every citizen living on the blessed territories of the Kingdom, considered a good contribution to combating fanaticism, and assuring intermediateness and moderation which our true Islamic religion calls for.

With the national dialogue, the initiative of the Custodian of the Two Holy Mosques for dialogue among civilizations and followers of all religions was launched. The beginning of the dialogue was from Mecca Mukarrama, the unanimous stage among Muslims on the need for dialogue. In this direction, the Custodian of the Two Holy Mosques, King Abdullah Bin Abdel Aziz, may Allah protect him, launched a universal call for the scholars and thinkers of the Islamic world to meet in the International Islamic Dialogue Conference at Mecca Mukarrama, under a generous sponsorship of him. The holding of that conference in Mecca Mukarrama in 2008, aimed at consultation among Muslims about the dialogue conference between the three divine religions, was proposed by the Custodian of the Two Holy Mosques.

That conference issued the Call of Mecca Mukarrama (Nida's Mecca) which called to nullify the theory of struggle amongst civilizations, demonstrate the dangers of this theory, and assure the civilization dialogue. The conference further called for the widening of the dialogue gates to include all attitudes and trends.

The initiative of Custodian of the Two Holy Mosques, King Abdullah bin Abdul-Aziz, to hold the International Conference on Dialogue among the followers of the divine religions, was based on the decisive and vital role of the Kingdom in supporting the dialogue in the world and among all the humanity members. The conference was held at the headquarters of the United Nations, New York in 2008, in which, the Custodian of the Two Holy Mosques emphasized that the religions, by which Allah, the Exalted, meant to bestow happiness over the humanity, should not be a reason for their misery and sadness; and that the human is the peer of the human and his/her partner on this planet. So, either they live together in peace and serenity, or else all will be destined into the blazing flames of misunderstanding, hostility and hatred.

King Abdullah, in an international pioneering initiative, called for an international dialogue represented by Madrid dialogue which was held in 2008 under his call. In that

meeting, peoples of all religions and races gathered beneath one ceiling in order to accelerate and move the dialogue in the world. More than two hundred persons of the followers of the divine religions participated in this dialogue throughout the whole world. Among the people who attended were Catholic Cardinals, Angelic Bishops, Orthodox Patriarchs, Jewish Rabbis, Buddhists Priests, and Muslim leaderships representing the different sects, and others.

The theme of the dialogue among the followers of the different religions and cultures is gaining great importance and care by the Custodian of the Two Holy Mosques, and a remarkable status, being a sufficient example of our Islamic culture and cultural diversification, as well as a civilization, wealthy heritage. Based on his belief, may Allah protect him, in the utmost importance this theme is attaining in the world of today, that is living amongst heavily tensioned clouds, and within the ever widening circle of challenges before the humanity, and since he perceived the danger of the religious and racial fanaticism, along with the collateral violence and rejection of the other, the Custodian of the Two Holy Mosques warned saying: "Focus over time on the points of differences among the followers of the religions and cultures led into fanaticism, and was a reason for breaking out of devastating wars, through which too much amounts of bloods were shed, which were at all for no reason, logics or sound thought." Furthermore, injustice and absence of justice are in direct opposition with the values of the human and his/her higher principles in seeking to achieve security and peace. There are too many shapes of the spread over of injustice, and the aggression and occupation imposed on the Palestinian people as well as the absence of the simplest human rights, pushes the area to move violence and drift away from the justice and peace.

The announcement of King Abdullah Center for the Dialogue of Religions in Vienna, and the establishment of Abdullah Bin Abdel Aziz International Center for Dialogue and Peace, at the UNESCO headquarters, stem from the true belief of the Kingdom of the importance of peace spreading all over the globe, and a belief of the reinforcement of coexistence, understanding, and publishing the human values for the sake of realizing the international security and peace.

The method of dialogue initiated by the Custodian of the Two Holy Mosques had been demonstrated in the world capitals and cities, from Madrid to New York, and gained a high level of unanimous acceptance. The initiative of the Custodian of the Two Holy Mosques continued its international path and approached Geneva and Vienna, as well as other countries and cities, which were important stations in the path of the international call for dialogue and coexistence among nations and cultures.

Even with this initiative for dialogue, the Kingdom did not live in shadow or stood aside far of the world activity. Rather, it was and still is an active presence, thanks to the pivotal role bestowed on it by Allah, the Almighty, among the world, and because of its influential

role, religiously, culturally and economically. The Kingdom, while it calls for dialogue and cultural diversity, ascertains, at the same time, its religious identity, the true Islamic Doctrine and its sublime mission, being the cradle of light, the humanitarian and civilization interaction, tolerance, peace and goodness for all the humanity.

Peace and blessings of Allah be upon you.

(The author is President of Human Rights Commission of Saudi Arabia.)

Protection of Human Rights of Minorities in India through the Prevention of Atrocities: A New Model for Multicultural Society

Surya Narain Yadav
India

Statement of the Problem

There has been a phenomenal rise in the incidents of atrocities against minorities in India, especially during 1980s and 1990s. Indeed, there will be no exaggeration in describing these last two decades of the twentieth century as "Communal Decades" in the history of independent India. More importantly, the revivalism of communal frenzy, propagation of Hindutva and the efforts by the Hindu fundamentalist and rightist parties to impose the Hindu culture on the non-Hindus and epidemic outbreak of communal riots in eighties and nineties have posed a serious threat to the existence and identity of minorities, particularly the Indian Muslims and Christians.

The post-independent India has witnessed thousand of communal holocausts. During all these years, the annual number of communal riots has rarely come down. Thousands of lives and properties worth crores of rupees have been systematically destroyed and looted in these communal carnages. These atrocities of almost genocidal character have carved deep scars in the psyche of the Indian minorities communities.

It is pertinent to point out that –

(i) atrocities are not essentially confined to the Muslims, but gradually covering the Sikhs, the Christians, the Buddhists and the Dalits especially, the 'Dalit Christians' and 'Dalit Muslims';

(ii) atrocities are being inflicted not only in the name of religion and culture but also for political power and economic advantage and finally;

(iii) atrocities have clearly exposed the active involvement of administration, particularly the police. The communal and caste prejudices of the Indian administration is an open fact and it has been clearly established by relevant enquiries and unflinching evidences.

Constitutionally and legally speaking, the term "atrocity" was defined for the first time in India in 1989 by the Schedule Castes and the Schedule Tribes (Prevention of atrocities) Act, 1989 and its application was restricted to the members of Schedule Castes and Schedule Tribes. It is pertinent to observe that the definition of 'atrocity' is exclusionist in nature but not exhaustive. Neither it covers the minorities under its purview nor it includes many

incidents of atrocities. In this context, it is important to point out that prior to the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989, the acts of atrocity on SCs and STs took myriad forms but in the absence of any firm or legal definition of the extent of atrocities that went on. However, the dimension of their exploitation and perpetration of atrocities on them by higher castes was to be dealt with under the normal penal laws.

Concept of Minority under the Constitution of the Republic of India

The term 'minority' has not been defined in the Indian Constitution. Even the National Commission for Minorities Act 1992 does not define the word 'minority' and merely says that 'minority' for the purpose of this Act means "a community notified as such by the Central Government." Nevertheless, the Constitution uses the term 'minority/minorities' only in four articles, namely, Articles 29 (1), 30, 350-A and 350-B. To illustrate this fact, it is significant to mention the relevant articles dealing with minority. For instances:

1. Article 29 of the Constitution of India reads as follows:

Article 29 *(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.*

(2) No citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them.

2. Article 30 of the Constitution of India reads as follows:

Article 30 *(1) All Minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.*

(2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

3. Article 350 A of the Constitution of India reads as follows:

Article 350A *It shall be the endeavour of every state and of every local authority within the state to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups and the President may issue such directions to any state as he considers necessary or proper for securing the provision of such facilities.*

4. Article 350 B of the Constitution of India reads as follows:

Article 350B *(1) There shall be a special officer for linguistic minorities to be appointed by the President.*

(2) It shall be the duty of the special officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each house of Parliament, and sent

to the Governments of the States concerned.

Remarkably, the National Commission for Minorities Act 1992 under section 2 (c) categorically says that 'Minority' for the purposes of this Act means "a community notified as such by the Central Government." Under this provision, the Union Government (Welfare Ministry) had issued a Notification in 1993 listing the Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) as the 'Minorities.' As per 1991 Census, population of minority groups constitutes 17.17 per cent of the total population of the country.

Demographic Profile of the Indian Minorities

As per Census 2001, the population of Muslims, Christians, Sikhs and Buddhists are 12.4, 2.3, 1.9, and 0.8% respectively. The detailed distribution of minorities population in different parts of India is evident from the following tables.

Proportion and growth rate of population by religious communities, India, 1961-2001

Religious communities	Unadjusted					Adjusted*				
	1961	1971	1981	1991	2001	1961	1971	1981	1991	2001
1	2	3	4	5	6	7	8	9	10	11
					Proportion					
All religious communities	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
Hindus	83.4	82.7	82.6	82.0	80.5	84.4	83.5	83.1	82.4	81.4
Muslims	10.7	11.2	11.4	12.1	13.4	9.9	10.4	10.9	11.7	12.4
Christians	2.4	2.6	2.4	2.3	2.3	2.4	2.6	2.5	2.3	2.3
Sikhs	1.8	1.9	2.0	1.9	1.9	1.8	1.9	2.0	2.0	1.9
Buddhists	0.7	0.7	0.7	0.8	0.8	0.7	0.7	0.7	0.8	0.8
Jains	0.5	0.5	0.5	0.4	0.4	0.5	0.5	0.5	0.4	0.4
Others	0.3	0.4	0.4	0.4	0.6	0.3	0.4	0.4	0.4	0.7
Religion not stated	Neg.	Neg.	Neg.	Neg.	Neg.	Neg.	Neg.	Neg.	Neg.	Neg.

	Growth rate							
	Unadjusted				Adjusted*			
	1961-71	1971-81	1981-91	1991-01	1961-71	1971-81	1981-91	1991-01
All religious communities	**24.8**	**21.4**	**26.0**	**22.7**	**24.8**	**24.8**	**23.8**	**21.5**
Hindus	23.7	21.3	25.1	20.3	23.4	24.2	22.8	20.0
Muslims	30.8	22.9	34.5	36.0	31.2	30.8	32.9	29.3
Christians	32.6	13.7	21.5	22.6	36.0	19.2	17.0	22.1
Sikhs	32.3	26.0	24.3	18.2	32.0	26.2	25.5	16.9
Buddhists	17.1	23.8	35.3	24.5	17.0	25.4	36.0	23.2
Jains	28.5	23.1	4.6	26.0	28.5	23.7	4.0	26.0
Others	45.7	26.6	18.2	103.1	97.7	26.6	13.2	111.3
Religion not stated	-68.1	66.9	590.1	75.1	-65.7	67.1	573.5	76.3

* - Excludes Jammu & Kashmir and Assam for all decades from 1961 to 2001.

Note: 1. The Census 2001 population figures for India and Manipur exclude those of Mao Maram, Paomata and Purul sub-divisions of Senapati district of Manipur.

2. No Census conducted in Assam in 1981 and in Jammu & Kashmir in 1991.

3. Neg.- Negligible

Nature and the Changing Dimension of Atrocities against the Indian Minorities

Indeed, it is a matter of serious and deep regret that even at the beginning of the new millennium, the minorities in India continue to suffer atrocities. Not surprisingly, the incidents of atrocities committed by higher castes on members of the minority communities continue to be reported from almost all parts of India in varying numbers.

Broadly speaking, atrocities are committed on them on account of their economic dependence on higher castes landowners, educational backwardness and social discrimination. Minorities have been victim of social disabilities and restrictions in their social existence imposed by dominant upper castes, especially in rural areas. Economic and social exploitation of minorities takes many forms like the practice of bonded labour, denial of minimum wages and discrimination in the use of common public facilities, religious places, etc. Discrimination in and denial of access to public facilities and opportunities to minorities had been a historical phenomenon.

Today, not only atrocities on minorities are increasing rapidly, in fact, the dimension of the atrocities is also changing significantly. The basic forms of atrocities include, *inter-alia:*

(a) Psychological Harassment

(b) Communal Violence

(c) Political Intimidation

(d) Economic Marginalisation

(e) Social Dislocation

Recent Incidents of Violence against Indian Minorities

A case study of atrocities on Christian minorities in Orissa

The feast of Christmas, an event of joy and peace turned to be a tragedy. When the world commemorated the first anniversary of Tsunami, the Christians in Kandhamal district were devastated by another Tsunami of communalism. The trouble began on 24th December 2007 at 8:00 a.m. at Bamunigam village, close to the police station under Daringabadi Block of Kandhamal District. Kui Kalyan Samiti (a tribal community) had called for a bundh (a means of protest) on 25th and 26th December, Christmas day.The aim of the bandh was political; it had nothing to do with Christians; but the calling of a bandh on Christmas day was a calculated mischief. Christians suspected trouble. So, already on 22nd December, a Christian delegation had informed the District Magistrate and the Superintendent of Police of Kandhamal district about their fears. The civil authorities promised all help and protection.

As the Christians were preparing themselves for Christmas celebration, some Hindu Fundamentalists (Sangh Parivar) forcefully removed Christmas decorations which the Ambedkar Baniko Sangho comprising the local Christian entrepreneurs had put up with

due permission from the administration. The Sangh Parivar also stopped the weekly market intentionally in order to prevent the Christians from doing Christmas shopping. All of a sudden, a crowd of two to three hundred fanatics with destructive weapons began to destroy the shops of Christians. The Hindu shopkeepers did not like the shops of Christians which came up in recent years; indeed a challenge to the Hindu shops. They shot at our boys; two were wounded. Hearing the gunshots our people ran to the jungles to save themselves. All the sixteen Christian shops were looted and torched by them.

A Pre-planned Operation

Orissa has a history of communal flare-ups every now and then. But, this time it was very intensive, violent and pre-planned from all points of view. Sangh Parivar, under the leadership of Swami Lxmananda Saraswati, a self-styled 'sadhu,' was making preparation for months and years for this onslaught in Kandhamal.

The speed with which attacks were carried out clearly shows that it was not possible unless it was planned. Within half an hour, over two hundred people in Bamunigam parish premises (they sprang up form no where) and 400 to 500 persons in Balliguda where maximum destruction took place. In Balliguda, the attackers came in trucks and jeeps. They appeared on the scene of destruction with instruments capable of causing massive destruction in a short time. For instance, they used swords, cycle chains, sticks, crowbars, acid for burning, guns, iron cutters, etc.

The attackers had enough foodstuffs with them to prepare their meals in the area of attack. They blocked all the roads to Kandhamal within hours by felling huge trees on the road, a fact that was accepted also by the administration. The attackers were grouped together in hundreds so that they could simultaneously attack in seven different locations.

All these show that without pre-planning such unprecedented destruction is not possible within a short time, maximum destruction in three days.

Nature of Operation

They broke open the door and looted whatever they could. Then they gathered everything in the middle of the buildings (church, convent, priests' residence, etc.) poured petrol and made a bonfire. Before leaving the place they made sure to smash window glasses, twist the grills and fans. The whole operation was carried out with clinical precision. They were shouting slogans: "Jai Shri Ram" "Jai Bajrang Dal" "Kill the Christians," "Christians go back," etc. They desecrated the churches and statues with a vengeance.

We could not rely on the police or the force. In fact, most of the destruction took place even in the presence of police force. For instance, the large church of Bamunigam parish was vandalized and burned in the presence of 20 policemen who just watched.

Composition of Attackers

In general, the armed mob belonged to an outfit what is known as "Sangh Parivar,"

professing an extremist and intolerant "Hindutva" ideology of hate and violence against minorities. But, the people who perpetrated the crimes in Kandhmal on the occasion of Christmas were as a rule from other villages to avoid recognition; so after committing the crimes, they disappeared from the scene. So, often it is difficult to identify the individuals involved in the acts of arson and vandalism.

Government's Role

Although the Government promised us all support and protection, but our experience shows that, even though prior information was given on 22nd and 24th December to the civil authorities, no effective and preventive measures were taken. So, they were not able to control the attackers or prevent the destruction. The police force was a mere spectator. Either the deployment of the force was insufficient or the force was not given the power to take necessary action on the spot. One catholic officer tried to persuade the fanatics not to desecrate the church at Balliguda, the headquarters of the Sub-Divisional Office. The crowd pushed him aside. Strange enough, he was transferred the next day itself.

Definitely the police and the intelligent department knew what was coming, but either they did not inform the authorities or some of the officials colluded with the nefarious plan of the Swami. The inaction and indifference of the officials prove this opinion very strongly. So, the whole operation was pre-meditated and preplanned with the connivance of some of the officers in high places.

Quantum of Destruction

The sequence of events is quite clear. The Christian community and its institutions were targeted. The devastation went on for more than 72 hours with the police being physically present on the spot and looking on. The anti-Christian violence continued unabated till 27th December 2007. More than half of 24 parishes in Kandhamal District could not celebrate Midnight Mass because of fear of attack. During Midnight Mass on 24th December, someone threw a bomb at Archbishop's House at Bhubaneswar. It exploded; fortunately no damage took place.

Their aim was total destruction of property and weakening of morale of Christian community. There was no attack on people. During the vandalism that lasted for four days the following things were destroyed, looted or torched.

Large Parish Churches	8
Village Churches	50
Convents	4
Presbytery	5
Hostels	4
Minor Seminaries	2
Vocational Training Center	1

Health Centers (Balliguda, Pobingia, Srasananda)

Reasons for the Attack on Christians

Christians are accused of "converting" Hindus to Christianity. The Sangh Parivar exaggerate the number of Christians in order to drive them away form the State and eventually from the country. This is the hidden agenda of Sangh Parivar. Conversion is only a bogy to camouflage their sinister intention of making India a Hindu Nation. Consequently, all other minorities should abide by the majority rules, otherwise they are to be ready to leave the country or ready to die. Just now the fanatics are going around in Kandhamal threatening individuals and families by giving them three options: leave the country, or become a Hindu or be ready to die. The Christians who have witnessed the total destruction of all their belongings are in great mental agony.

The real reason for these calculated atrocities on the Dalits (Schedule Castes and Schedule Tribes) is the liberation of the Dalits whom the upper caste have been treating for many centuries as "untouchables" and cheap labour. According to Hindu tradition, they are outside the Hindu caste system; so they are called "out-castes." The church has been in the forefront to initiate a movement in order to liberate them by the dedicated services (education, health, development) of Christian missionaries and NGOs. As a result, many of the educated SC/ST persons are well-placed in the society and have improved their life in every way. The Sangh Parivar (Upper Caste) who had them under their hegemony all these centuries are now challenged. They are threatened. So, by using the bogey of "conversion" they want to stop the development of the Dalits. They want to protect the hegemony of the upper caste. As they did in the past for many centuries, they want to continue to keep the SC-ST oppressed and marginalized for ever.

Hindu-Christian Relations in Orissa in the Past

Till a few decades ago, various religious communities lived in harmony in India. Then began the hate campaign systematically organized by the Sangh Parivar to create an enemy in the Christian, an enemy of the nation and that of the Hindus. Gradually and diabolically, the mind of the ordinary people are poisoned, so that they are obsessed to do any heinous crime (for instance, the destruction of Babri Masjid in Agust 1992, massacre of Muslims in Gujarat in March 2002, the vandalism and destruction of the churches in Gujarat two years ago). This venom of communalism is poisoning the entire rural masses in the country. Therefore, no government which wants to hold on to political power will go against this diabolic movement for fear of displeasing the Hindu majority and lose the forth-coming election in 2009. So, the fundamentalists have a field day for regular attack or harassment of the minorities in India. Now, it becomes clearer that Orissa is the second state selected for 'Hindutva' experiment. Secularism guaranteed by the Constitution of India is no more in practice, so far as minorities are concerned. The minorities are left at the mercy of the Sangh Parivar.

Christian community can not use the same wrong means which the Sangh Parivar uses in order to counteract this danger. Therefore, they should adopt a more positive approach. For instance, they should be more open in order to keep closer relationship with members of other faiths. Regular contact with other NGOs and government officials should be maintained, and not only when the house is on fire. Inter-religious dialogue should be regularly conducted, so that an atmosphere of communal harmony is created.

Communal Political Outfits

Religion of majority in India is Hinduism; minorities are comparatively small. In general, Hindus are tolerant and had maintained reasonably good relationship with other religious groups throughout. But, the Sangh Parivar (Rashtriya Swayamsevak Sangh (RSS) Vishwa Hindu Parishad (VHP), Bajrang Dal, etc.) is determined to establish a Hindu Nation at any cost. The fundamentalists are using religion for capturing political power; the dangerous means they use to achieve this goal does not reflect a great desire for any religious renewal as such. It is interesting to note that the means they use to achieve this political supremacy (violence, murder, arson, rape, lie, etc.) are contrary to the religious tenets of Hindu Scriptures. It seems that for them, any means is good enough to achieve their goal.

Violation of Minority Rights

During natural calamities, such as Super-cyclone, floods, Tsunami etc., it was the NGOs and the Church which brought in relief and rehabilitation immediately. Successive Governments in Orissa have appreciated and encouraged the voluntary agencies in the past. Contrary to the accepted practice, the Government of Orissa declared that no NGOs and the religious groups including the Churches are allowed to distribute relief except the Government agencies, and those who violate this will be arrested. Even after thirty days this embargo was still in force. The Government justified its stand saying that it wanted to maintain law and order situation in the district. Looking at this law in the context of what has happened in December and how the Government has reacted, one can find three sinister motivations in this:

- To prove their claim that Christians are converting by force, fraud and enticement, the Government didn't allow them to distribute relief to the needy, so no conversions will take place.

- To alienate the Dalits and the Tribals from the Church and from its developmental activities thereby, hinder the liberation movement among the Dalits and Tribals.

- To pressurize Christians to return to Hinduism, "Gharvapasi."

This triple hidden motivation advocates the theory that there could have been a secret understanding between the Sangh Parivar and the Government "to take no serious action" to prevent this destruction and persecution, so that the Hindu majority will be pleased on whose votes depends the future of the Government. This theory explains why or how the Orissa Government with all its might was unable or unwilling to stop the destruction of institutions

and properties in a small district, like Kandhamal for nearly four days and nights?

The situation seems to be peaceful; but priests, religious and the people are still under the fear of being accused by the Sangh Parivar (conversion, instigating the people, etc.). Many of our hostel children have no place to stay. So, they are sent home; they may lose one year. Many men are hiding themselves in the forest for fear of arrest.

Few arrests have been made; threats and intimidation are still going on. Atmosphere of suspicion is very strong in the minds of all. Some relief materials are distributed by the Government, but some feel that it is not enough. Some steps are being taken regarding adequate compensation. But, the absolute rule against the distribution of relief by the NGOs and the Church still remains even after 30 days.

Atrocities on Minorities: A New Threat to Human Rights

The minority communities in post-independent India have been continuously experiencing discrimination, ruthless exploitation, social oppression, segregation and above all, violent and inhuman atrocities of varying kinds not only by the militant Hindu religious outfits and social activists, but also by the various regional and national political formations professing and propagating "Hindutva." In fact, there have been organized, well-planned and systematic attempts by the caste Hindus (the upper castes of the so-called 'Hindu' society) to inflict atrocities of different types on the historically deprived, depressed, discriminated and even marginalized communities in the Indian society, basically to maintain their powerful, privileged and hegemonistic position in the existing social order.

This emerging trend of atrocities has not only made the survival of minorities difficult and inhospitable and the enjoyment of basic human rights and fundamental freedoms a remote impossibility, but rather has posed a serious challenge to the multi-ethnic, multi-cultural, democratic and secular character of the Indian Republic. Indeed, the ethnic, religious and linguistic minorities in India have been placed in a non-dominant position and, hence, incapable of enjoying effectively their equal, inalienable and universal human rights and fundamental freedoms in their capacity as Indian citizens.

Government of India's Legal, Constitutional and Political Initiatives for the Protection and Promotion of Human Rights of the Minority Communities

In order to protect the right to life, liberty, property and security of the minority communities, the Government of India has undertaken the following measures:

1. Establishment of the National Commission for Minorities

The National Commission for Minorities (NCM) is a body constituted by the Government of India to monitor and evaluate the progress of people classified as minorities by the Indian government. Essentially, the minorities in India consist of followers of all religions other than Hinduism and weaker sections in the Hindu community. The Commission is also referred to

as the Minority Commission. It was formed as a result of an act of the Indian Parliament in 1993.

The NCM adheres to the UN Declaration of 18 December 1992 which states that "States shall protect the existence of the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and encourage conditions for the promotion of that identity."

Functions and Powers

The Commission has the following functions:

• Evaluate the progress of the development of minorities under the Union and States;

• Monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures;

• Make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments;

• Look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities.

The Commission has the following powers:

• Summoning and enforcing the attendance of any person from any part of India and examining him on oath;

• Requiring the discovery and production of any document;

• Receiving evidence on affidavit;

• Requisitioning any public record or copy thereof from any court or office;

• Issuing commissions for the examination of witnesses and documents.

2. Setting-Up the National Human Rights Commission of India

The National Human Rights Commission (NHRC) of India is an autonomous statutory body established on October 12, 1993, under the provisions of *The Protection of Human Rights Act, 1993* (TPHRA). The Commission is in conformity with the Paris Principles – a broad set of principles agreed upon by a number of nations for the promotion and protection of human rights, in Paris in October 1991.

Functions

TPHRA mandates the NHRC to perform the following functions:

• proactively or reactively inquire into violations of human rights or negligence in the prevention of such violation by a public servant;

• visit any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates and make recommendations;

• review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective

implementation;

• review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

• study treaties and other international instruments on human rights and make recommendations for their effective implementation;

• undertake and promote research in the field of human rights;

• spread literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

• encourage the efforts of NGOs and institutions working in the field of human rights;

• such other function as it may consider it necessary for the protection of human rights;

• take suo motu action, if required in a case if the victim is not in a position to access a court.

Composition and Appointment

Sections 3 and 4 of TPHRA lay down the rules for appointment to The NHRC. The chairperson and members of the NHRC are appointed by the President of India, on the recommendation of a committee consisting of:

• The Speaker of the House of the People: Member

• The Minister-in-charge of the Ministry of Home Affairs in the Government of India: Member

• The Leader of the Opposition in the House of the People: Member

• The Leader of the Opposition in the Council of States: Member

• The Deputy Chairman of the Council of States: Member

The NHRC consists of:

• A Chairperson who has been a Chief Justice of the Supreme Court of India

• One Member who is, or has been, a Judge of the Supreme Court of India

• One Member who is, or has been, the Chief Justice of a High Court

• Two Members to be appointed from among persons having knowledge of, or practical experience in, matters relating to human rights

3. President of India's Guidelines for Implementation of Prime Minister's New 15 Point Programme for the Welfare of Minorities

The Hon'ble President, in his address to the Joint Session of Parliament on February 25, 2005, had announced that the government would recast the 15 Point Programme for the Welfare of Minorities with a view to incorporate programme specific interventions. Prime Minister, in his address on the occasion of Independence Day, 2005, announced inter-alia that "We will also revise and revamp the 15 Point Programme for Minorities. The new 15 Point Programme will have definite goals which are to be achieved in a specific time frame."

In pursuance of these commitments, the earlier programme has been revised as the Prime Minister's New 15 Point Programme for the Welfare of Minorities. A copy of the programme is enclosed.

The objectives of the programme are as follows –

a) Enhancing opportunities for education;

b) Ensuring an equitable share for minorities in economic activities and employment, through existing and new schemes, enhanced credit support for self-employment, and recruitment to State and Central Government jobs;

c) Improving the conditions of living of minorities by ensuring an appropriate share for them in infrastructure development schemes;

d) Prevention and control of communal disharmony and violence.

An important aim of the new programme is to ensure that the benefits of various government schemes for the underprivileged reach the disadvantaged sections of the minority communities. The underprivileged among the minorities are, of course, included in the target groups of various government schemes. But in order to ensure that the benefits of these schemes flow equitably to minorities, the new programme envisages location of a certain proportion of development projects in minority concentration areas. It also provides that, wherever possible, 15% of targets and outlays under various schemes should be earmarked for minorities.

The emphasis of the programme on the maintenance of communal peace and harmony, through appropriate measures, and ensuring a reasonable representation of minorities in government, including the public sector, remains as emphatic as ever and these continue to be important constituents of the new programme.

The programme does not envisage any change or relaxation of any criteria, norms or eligibility conditions in any scheme for minorities. These would continue to be as provided for in the original schemes included in the programme.

The term "substantial minority population" in the 15 Point Programme applies to such districts/sub-district units where at least 25% of the total population of that unit belongs to minority communities.

The target group of the programme consists of the eligible sections among the minorities notified under Section 2 (c) of the National Commission for Minorities Act, 1992, viz, Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis).

In States, where one of the minority communities notified under Section 2 (c) of the *National Commission for Minorities Act*, 1992, is, in fact, in majority, the earmarking of physical/financial targets under different schemes will be only for the other notified minorities. These states are Jammu & Kashmir, Punjab, Meghalaya, Mizoram and Nagaland. Lakshadweep is the only Union Territory in this group.

The new programme will be implemented by Central Ministries/Departments concerned through State Governments/Union Territories. Each Ministry/Department concerned shall appoint a nodal officer, not below the rank of a Joint Secretary to Government of India, for this programme. The Ministry of Minority Affairs shall be the nodal Ministry for this programme.

Physical Targets and Financial Outlays:

Considering the complexity of the programme and its wide reach, wherever possible, Ministries/Departments concerned will earmark 15 percent of the physical targets and financial outlays for minorities. These will be distributed between States/UTs on the basis of the proportion of Below Poverty Line (BPL) population of minorities in a particular State/Union Territory to the total BPL population of minorities in the country, subject to the following:

(a) (i) For schemes applicable exclusively to rural areas, only the ratio relevant to the BPL minority population in rural areas would be considered.

(ii) For schemes applicable exclusively to urban areas, only the ratio relevant to the BPL minority population of urban areas would be considered.

(iii) For others, where such differentiation is not possible, the total would be considered.

(b) For States/UT referred to in para 7 (b), the earmarking will only be for the BPL minorities, other than that in majority.

The schemes amenable to such earmarking are the following:

Enhancing opportunities for Education

• Equitable availability of ICDS Services –

Integrated Child Development Services (ICDS) Scheme by providing services through Anganwadi Centres

• Improving access to School Education –

Sarva Shiksha Abhiyan, Kasturba Gandhi Balika Vidyalaya Scheme, and other similar Government schemes.

(B) Equitable Share in Economic Activities and Employment

• Self-Employment and Wage Employment for the poor

(a) Swarnjayanti Gram Swarojgar Yojana (SGSY)

(b) Swarn Jayanti Shahari Rojgar Yojana (SJSRY)

(c) Sampurna Grameen Rozgar Yojana (SGRY)

• Upgradation of skills through technical training –

New Industrial training Institutes (ITI) and upgradation of existing ITI.

• Enhanced credit support for economic activities –

Bank credit under priority sector lending.

(C) Improving the living conditions of minorities

• Equitable share in rural housing scheme –

Indira Awaas Yojana (IAY)

• Improvement in condition of slums inhabited by minority communities –

Integrated Housing & Slum Development Programme (IHSDP) and Jawaharlal Nehru National Urban Renewal Mission (JNNURM)

Implementation, Monitoring and Reporting

A. Ministry/Department Level:

Ministries/Departments implementing the schemes, included in the programme shall continue to implement and monitor these schemes with reference to the physical targets and financial outlays. They are expected to review the progress of the programme on a monthly basis and report the progress of implementation, in respect of the schemes under this programme, on a quarterly basis, by the fifteenth day of next quarter, to the Ministry of Minority Affairs.

B. State/UT Level:

(i) States/UTs are expected to constitute a State Level Committee for Implementation of the Prime Minister's New 15 Point Programme for the Welfare of Minorities headed by the Chief Secretary with members consisting of the Secretaries and Heads of Departments implementing the schemes under the 15 Point Programme, representatives from the Panchayati Raj Institutions/Autonomous District Councils, three representatives from reputed non-governmental institutions dealing with minorities and three such other members considered appropriate by the state government/UT administration. The Department dealing with Minorities of the State/UT may be made the nodal department for monitoring the 15 Point Programme. The Committee should meet at least once every quarter and the Department dealing with Minorities of the State/UT may send a quarterly progress reports to the Ministry of Minority Affairs by the 15th day of the next quarter.

(ii) District Level:

Similarly, at the district level, a District Level Committee for Implementation of the Prime Minister's New 15 Point Programme for the Welfare of Minorities may be constituted headed by the Collector/Deputy Commissioner of the district, with District level officers of the departments implementing the programme, representatives from the Panchayati Raj Institutions/Autonomous District Councils, and three representatives from reputed institutions dealing with minorities. The District Level Committee shall report progress of implementation to the Department dealing with Minorities of the state government/UT administration for placing it before the State Level Committee.

C. Central Level:

(i) At the central level, the progress of implementation, with reference to targets, will

be monitored once in six months by a Committee of Secretaries (COS), and a report will be submitted to the Union Cabinet. The Ministry of Minority Affairs shall be the nodal Ministry to prepare reports in this regard for placing before the COS and the Union Cabinet once in six months. All Ministries/Departments concerned with this programme shall submit quarterly reports to the Ministry of Minority Affairs by the 15th day of the next quarter.

(ii) There shall be a Review Committee for the Prime Minister's New 15 Point Programme for the Welfare of the Minorities headed by Secretary, Ministry of Minority Affairs, with nodal officers from all the Ministries/Department concerned which shall meet at least once every quarter to review the progress, obtain feedback and resolve problems and provide clarifications, as might be needed.

Prime Minister's New 15 Point Programme for the Welfare of Minorities

(A) Enhancing opportunities for Education

(1) Equitable availability of ICDS Services

The Integrated Child Development Services (ICDS) Scheme is aimed at holistic development of children and pregnant/lactating mothers from disadvantaged sections, by providing services through Anganwadi Centres such as supplementary nutrition, immunization, health check-up, referral services, pre-school and non-formal education. A certain percentage of the ICDS projects and Anganwadi Centres will be located in blocks/villages with a substantial population of minority communities to ensure that the benefits of this scheme are equitably available to such communities also.

(2) Improving access to School Education

Under the Sarva Shiksha Abhiyan, the Kasturba Gandhi Balika Vidyalaya Scheme, and other similar Government schemes, it will be ensured that a certain percentage of all such schools are located in villages/localities having a substantial population of minority communities.

(3) Greater resources for teaching Urdu

Central assistance will be provided for recruitment and posting of Urdu language teachers in primary and upper primary schools that serve a population in which at least one-fourth belong to that language group.

(4) Modernizing Madarsa Education

The Central Plan Scheme of Area Intensive and Madarsa Modernization Programme provides basic educational infrastructure in areas of concentration of educationally backward minorities and resources for the modernization of Madarsa education. Keeping in view the importance of addressing this need, this programme will be substantially strengthened and implemented effectively.

(5) Scholarships for meritorious students from minority communities

Schemes for pre-matric and post- matric scholarships for students from minority

communities will be formulated and implemented.

(6) Improving educational infrastructure through the Maulana Azad Education Foundation

The government shall provide all possible assistance to Maulana Azad Education Foundation (MAEF) to strengthen and enable it to expand its activities more effectively.

(B) Equitable Share in Economic Activities and Employment

(7) Self-Employment and Wage Employment for the poor

(a) The Swarnjayanti Gram Swarojgar Yojana (SGSY), the primary self-employment programme for rural areas, has the objective of bringing assisted poor rural families above the poverty line by providing them income generating assets through a mix of bank credit and Governmental subsidy. A certain percentage of the physical and financial targets under the SGSY will be earmarked for beneficiaries belonging to the minority communities living below the poverty line in rural areas.

(b) The Swarn Jayanti Shahari Rojgar Yojana (SJSRY) consists of two major components namely, the Urban Self-Employment Programme (USEP) and the Urban Wage Employment Programme (UWEP). A certain percentage of the physical and financial targets under USEP and UWEP will be earmarked to benefit people below the poverty line from the minority communities.

(c) The Sampurna Grameen Rozgar Yojana (SGRY) is aimed at providing additional wage employment in rural areas alongside the creation of durable community, social and economic infrastructure. Since the National Rural Employment Guarantee Programme (NREGP) has been launched in 200 districts, and SGRY has been merged with NREGP in these districts, in the remaining districts, a certain percentage of the allocation under SGRY will be earmarked for beneficiaries belonging to the minority communities living below the poverty line till these districts are taken up under NREGP. Simultaneously, a certain percentage of the allocation will be earmarked for the creation of infrastructure in such villages, which have a substantial population of minorities.

(8) Upgradation of skills through technical training

A very large proportion of the population of minority communities is engaged in low-level technical work or earns its living as handicraftsmen. Provision of technical training to such people would upgrade their skills and earning capability. Therefore, a certain proportion of all new ITIs will be located in areas predominantly inhabited by minority communities and a proportion of existing ITIs to be upgraded to 'Centres of Excellence' will be selected on the same basis.

(9) Enhanced credit support for economic activities

(a) The National Minorities Development & Finance Corporation (NMDFC) was set up in 1994 with the objective of promoting economic development activities among

the minority communities. The Government is committed to strengthen the NMDFC by providing it greater equity support to enable it to fully achieve its objectives.

(b) Bank credit is essential for creation and sustenance of self-employment initiatives. A target of 40% of net bank credit for priority sector lending has been fixed for domestic banks. The priority sector includes, inter alia, agricultural loans, loans to small-scale industries & small business, loans to retail trade, professional and self-employed persons, education loans, housing loans and micro-credit. It will be ensured that an appropriate percentage of the priority sector lending in all categories is targeted for the minority communities.

(10) Recruitment to State and Central Services

(a) In the recruitment of police personnel, State Governments will be advised to give special consideration to minorities. For this purpose, the composition of selection committees should be representative.

(b) The Central Government will take similar action in the recruitment of personnel to the central police forces.

(c) Large scale employment opportunities are provided by the Railways, nationalized banks and public sector enterprises. In these cases also, the concerned departments will ensure that special consideration is given to recruitment from minority communities.

(d) An exclusive scheme will be launched for candidates belonging to minority communities to provide coaching in government institutions as well as private coaching institutes with credibility.

(C) Improving the living conditions of minorities

(11) Equitable share in rural housing scheme

The Indira Awaas Yojana (IAY) provides financial assistance for shelter to the rural poor living below the poverty line. A certain percentage of the physical and financial targets under IAY will be earmarked for poor beneficiaries from minority communities living in rural.

(12)Improvement in condition of slums inhabited by minority communities

Under the schemes of Integrated Housing & Slum Development Programme (IHSDP) and Jawaharlal Nehru National Urban Renewal Mission (JNNURM), the central government provides assistance to States/UTs for development of urban slums through provision of physical amenities and basic services. It would be ensured that the benefits of these programmes flow equitably to members of the minority communities and to cities/slums, predominantly inhabited by minority communities.

(D) Prevention and Control of Communal Riots

(13) Prevention of communal incidents

In the areas, which have been identified as communally sensitive and riot prone, district

and police officials of the highest known efficiency, impartiality and secular record must be posted. In such areas and even elsewhere, the prevention of communal tension should be one of the primary duties of the district magistrate and superintendent of police. Their performances in this regard should be an important factor in determining their promotion prospects.

(14) Prosecution for communal offences

Severe action should be taken against all those who incite communal tension or take part in violence. Special court or courts specifically earmarked to try communal offences should be set up so that offenders are brought to book speedily.

(15) Rehabilitation of victims of communal riots

Victims of communal riots should be given immediate relief and provided prompt and adequate financial assistance for their rehabilitation.

4. Creation of a New Ministry of Minority Affairs

The Ministry of Minority Affairs, a ministry of the Government of India established in 2006. It is the apex body for the central government's regulatory and developmental programmes for the minority communities in India, which include Muslims, Sikhs, Christians, Buddhists and Zoroastrians (Parsis) notified as minority communities under Section 2 (c) of the National Commission for Minorities Act, 1992. As of May 2010, head of the ministry is the cabinet minister Salman Khursheed.

Overview

The ministry is also involved with the linguistic minorities and of the office of the Commissioner for Linguistic Minorities, representation of the Anglo-Indian community, protection and preservation of non-Muslim shrines in Pakistan and Muslim shrines in India in terms of the Pant-Mirza Agreement of 1955, in consultation with the Ministry of External Affairs. The Minister in charge is also Chairperson of the Central Wakf Council, India, which manages the running of the State Wakf Boards.

Organisations

• Constitutional and Statutory Bodies

Central Wakf Council (CWC)

National Commission for Minorities (NCM)

Commissioner for Linguistic Minorities (CLM)

• Autonomous Bodies

Maulana Azad Education Foundation (MAEF)

• PSUs and Joint Ventures

National Minorities Development and Finance Corporation (NMDFC)

5. Appointment of Sachar Committee to look into the issues and problems of Minorities

Sachar Committee was appointed by the government of India to examine whether different socio-religious categories (SRCs) in India have had an equal chance to reap the benefits of development, with a focus on Muslims in India. It was stated at the outset that minorities have to grapple with issues relating to identity, security and equity. It was also recognized that these three sets of issues are inter-related. But since the mandate of this Committee is primarily on equity, the Report essentially deals with relative deprivation of Muslims vis-à-vis other SRCs in various dimensions of development.

The analysis of the Committee shows that while there is considerable variation in the conditions of Muslims across states, (and among the Muslims, those who identified themselves as OBCs and others), the Community exhibits deficits and deprivation in practically all dimensions of development. In fact, by and large, Muslims rank somewhat above SCs/STs but below Hindu-OBCs, Other Minorities and Hindu- General (mostly upper castes) in almost all indicators considered. Among the states that have large Muslim populations, the situation is particularly grave in the states of West Bengal, Bihar, Uttar Pradesh and Assam. Interestingly, despite such deficits, the Community has lower infant mortality rates and sex-ratios. In addition to the "development deficit," the perception among Muslims that they are discriminated against and excluded is widespread, which exacerbates the problem.

The Committee strongly suggests that the policies to deal with the relative deprivation of the Muslims in the country should sharply focus on inclusive development and "mainstreaming" of the Community while respecting diversity. There is an urgent need to recognise diversity in residential, work and educational spaces, apart from enhancing inclusion of the really deprived SRCs in "spaces" created by public programmes and policy interventions.

The need for equity and inclusion in a pluralistic society can never be overemphasized. But, the mechanisms to ensure equity and equality of opportunity to bring about inclusion should be such that diversity is achieved and at the same time, the perception of discrimination is eliminated. This is only possible when the importance of Muslims as an intrinsic part of the diverse Indian social mosaic is squarely recognized.

In this context, the policy perspectives and recommendations for the upliftment of minority communities in India can be conveniently divided into two broad categories:

General policy initiatives/approaches that cut across different aspects of socioeconomic and educational development; and **Specific** policy measures that deal with particular issues and/or dimensions (e.g., education, credit, etc.).

1) General Policy Initiatives and Approaches:

- Need for transparency, monitoring and data availability
- Enhancing the legal basis for providing equal opportunities

• Enhancing participation in governance
• Shared spaces: need to enhance diversity

2) Specific Policy Initiatives:
• Criticality of education
• Adequate reflection of social diversity in the content of school text books
• Initiatives in school education
• Technical education and training for non-matriculates
• Initiatives for higher education
• Provision of hostels
• Teacher training programme
• Interventions to support the Urdu language
• Madarsas and mainstream education
• Enhancing access to credit and government programmes
• Improving employment opportunities and conditions
• Enhancing the efficacy of infrastructure provision
• Encouraging community initiatives

Suggestions and Recommendations for Improving the Human Rights conditions of the Indian Minorities

It ought to be pointed out that the Minorities Commission, as a non-statutory body was set up in 1978. In the days following Babri Masjid demolition, it was made a statutory body and in 1993 it came to be called National Commission for Minorities (NCM). Its main object is to safeguard the interest of minorities but its power is even less than the National Commission for Scheduled Castes, and National Human Rights Commission. Lacking any effective tool it is merely a spectator that can make some noise but cannot provide any effective remedy to prevent the increasing incidences of human rights violence encountered by the Indian minorities.

In view of the prevailing socio-economic and political milieu of contemporay India, following measures are urgently needed to improve the human rights conditions of the minority communities:

• State Minorities Commissions (SMCs) should be set up in the States where they do not exist. Uniformity in power and organization for all SMC is also needed.

• To set up study centres in Minority Concentration Districts (MCDs).

• To grant constitutional status to the NCM pending since 2004. The Constitution 103 Amendment Bill 2004, and the NCM (Repeal) Bill was to be presented in February 2009 but with the dissolution of 14th Lok Sabha the process of notification has to start afresh and no

action has been taken in this regard in 15th Lok Sabha.

• Sachar recommendations should be implemented fully in letter and spirit.

• State Minorities Commissions should be given power to implement, monitor and review PM's new 15 Point Programme.

• Independent, permanent and centralized institutional mechanism to monitor and evaluate the implementation of govtschemes.

• Programme awareness campaigns in local languages especially Urdu.

• Amendment of the Bodh Gaya Temple Act so that only Budhists are in the management committee.

• Minorities should be represented in selection committees for public appointments.

• Dalit Christians and Dalit Muslims should be given reservation on part with SCs.

• Ensure access to education and delivery of quality education.

• Simplified process to issue minority status certificate to educational institutions.

• Easy access to credit flows to minorities.

It seems significant to point out that even on the threshold of the 21st century, there has been tremendous rise in the incidents of atrocities against the minorities in India and therefore there is an urgent need to completely overhaul the present definition of atrocities in view of the changed socio-political and economic scenario of India and also extend its application to the members of the minority communities as well.

Notes and References

1. Hindutva: The word "Hindutva" is not found in the traditional Indian lexicon. It is of recent origin and, in fact, was used for the first time by V.D. Savarkar in 1923, when he published a book entitled "Hindutva or Who is a Hindu." According to Savarkar, Hindutva is what makes a person accept Hindustan or "the land of the Hindus" not only as the Pitrabhu or fatherland but also as the Punyabhu or holyland. Morever, the Hindu converts to Islam and Christianity don't share Hindutva because their "holyland is far off in Arab or Palestine."

2. Sangh Parivar: The concept is used to express collectively the ideology of Hindutva propogated by the Rashtriya Swayamsevak Sangh (RSS), the Vishwa Hindu Parishad, the Bajrang Dal and the Bhartiya Janata Party (BJP). The aim of the Sangh Parivar is to set up a Hindu Rashtra, a Hindu theocratic state in India. Indeed, the Sangh Parivar is trying to define India's unity in terms of "homogeneity" or "uniformity." This is in sharp contrast to the ground and time-tested reality that India is a State with different religious, languages and cultures. In fact, it comprises various nations and nationalities. Pluralism or "unity in diversity" is the hallmark of India's rich cultural heritage.

3. Dalit: The Constitution of India does not employ the term "Dalit" anywhere. However, it uses the expression "Schedule Castes" and "Schedule Tribes" in Articles 341 and 342

respectively. Therefore, the present conference paper liberally includes Schedule Castes, Schedule Tribes as well as other vulnerable and weaker sections of the society under the expression "Dalits."

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5. Protection of Human Rights Act, 1993.

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7. Ministry of Social Justice and Empowerment, Government of India, Annual Report, various isssues.

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9. United Nations Universal Declaration of Human Rights.

10. International Covenant on Economic, Social and Cultural Rights.

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GLOBAL GOVERNANCE AND HUMAN RIGHTS

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On Global Governance and Human Rights Protection

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The concept of global governance has become popular recently, which can be seen on the domestic and overseas newspapers and even government documents of countries around the world and international declarations. It has become a keyword of international politics, as popular as the concept of human rights protection after the Cold War. It seems that the academic circle should pay proper attention to the issue of how to deal with global governance and human rights protection.

First, global governance covers various realms of human social development, and improving the level of global governance unavoidably includes human rights protection. That is to say, human rights protection is a necessary ingredient of global governance. Global governance is a big concept. In general, global governance includes not only the traditional and non-traditional security issues such as ensuring peaceful co-existence of various countries, maintaining the world and regional stability, effectively dealing with proliferation of weapons of mass destruction such as nuclear weapons and biological and chemical weapons, terrorism, drug smuggling, piracy and other transnational organized crimes of various kinds, but also issues such as effectively coping with climate change, promoting carbon emission reduction, developing green energy and promoting environmental protection so as to ensure harmonious co-existence of human beings and the nature. If cannot be properly solved, these issues would seriously influence the life quality of all human beings, and even every individual. These issues also include narrowing down the development gap between various countries and within a country through strengthening development aid so as to promote common development and prosperity. During this process, we naturally have the issue of promoting coordination of macro policies of various countries against the background of rapid development of globalization and deepening of interdependence, so as to jointly ensure economic stability and sustainable development. On the other hand, human rights protection is also a broad concept. Human rights include people's rights to subsistence, to development, to be educated, to vote and social rights such as freedom to speech and migration. Traditional and non-traditional security issues cover the protection of the right to subsistence of many common people. Obviously, it goes against the basic concepts and requirements of human rights protection to let these traditional and non-traditional

security threats spread unchecked. After the outbreak of the financial crisis, a large number of unemployed people have emerged in both developed and developing countries. Their life conditions have deteriorated greatly, and thus protecting people's right to work has become a prominent problem facing the cause of human rights protection. In general, global governance covers every aspect of human rights protection, and the improvement of global governance will naturally promote the development of the cause of human rights protection. The two have different approaches but the same goal.

Second, strengthening global governance is also the logic consequence and value pursuit of the development of the cause of human rights protection. The development of human rights protection has evolved from specific case to general case and from regional to overall issue. During the French Revolution, the bourgeois energetically promoted human rights, aiming to resist the political oppression of the feudal autocratic rule in France. With the rise of bourgeois in Europe and the dissemination of human rights concept, people began to concern about the slavery system in the United States. Between the two world wars, the genocidal policy against Jews taken by Hitler Nazi made the human rights protection extremely urgent, which also promoted the international community to issue the *Universal Declaration of Human Rights* after the Second World War. During the Cold War, in order to disintegrate the socialist system in countries such as the Soviet Union and Eastern European countries, the Western countries such as the United States took advantage of the policy of excluding dissidents existing to some extent in these countries and raised high the banner of human rights again to energetically launch human rights diplomacy against these countries. After the Cold War, with the remaining influences of winning the Cold War, the United States and other Western countries promoted their western democracy values worldwide, which conflicted severely with the values of many other countries, especially Eastern Asian countries. Eastern Asian countries stressed that human rights should include political and social rights, as well as the rights to subsistence and develop. Promoting the cause of human rights protection should respect the differences and diversity of the cultural traditions of various countries and should give up power politics and confrontations in human rights realm. The debate enriched and improved the concept of international human rights. Entering the 21st Century, various countries began to stress and concern about human rights protection cause and "putting people first" became the starting and standing points for the governments of various countries to rule their respective countries. Against such background, global problems such as terrorism and climate change is becoming increasingly prominent, and promoting the deepening of human rights cause development is no longer the historical responsibility that can be solely undertaken by any individual country; the concept and policy of strengthening global governance through intensifying international cooperation are gaining more international recognition. Hence, the dissemination and popularization of

the concept of global governance will definitely not influence or weaken the development of human rights protection cause; on the contrary, it may encourage human rights protection to develop on a great platform of strengthening international cooperation. Thus, global governance is the new development of human rights protection cause. If we previously stressed more on the government responsibilities of some single countries in human rights protection, now, the issue has gone beyond any single countries and has become the collective responsibilities of the international community.

Third, effectively promoting global governance needs to more universally respect for and protection of human rights, maximize the activeness and creativity of all the people and actively participate in discussions on global governance to propose suggestions and make joint efforts. Global governance is not the castles in the air; it includes and involves in many areas. To promote global governance, we need to start from specific realms and combine the general goals of global governance with more effectively promoting and protecting human rights in specific realms and on specific problems, so as to solve these problems one by one. Globally, to promote global governance and encourage the development of human rights protection cause, we need to fundamentally maintain the world economic health and stability and sustainable development. First of all, we need to safeguard the employment right of common laborers, and based on this, more effectively safeguard laborers' rights to education and vocational training so as to ensure the common social members to have place to live, have their children educated, have jobs in robust years and can be supported when becoming aged. Meanwhile, we should also promote political and diplomatic settlement in some hotspot regions through pragmatic and effective international security cooperation, maintain the world peace, security and stability, effectively cope with terrorism and other transnational organized crimes and maintain the rights of common social members of existence and prevent their personal security from being harmed. We also need to improve and optimize policies and tactics and promote universal construction of good governance through enhancing and promoting common social members to publicly express their own opinions and participate in social and political affairs freely so as to form the strong social strength of combating corruption.

Fourth, compared with the situation that the traditional responsibilities of human rights protection are shouldered by the governments of various countries, strengthening global governance requires major powers to shoulder more responsibilities. As the major powers, mainly the developed countries, occupy a big share in the world GDP aggregation and shoulder major responsibilities in ensuring the world economic health and stability and sustainable development, providing development assistence to the vast developing countries, especially those underdeveloped countries, coping with climate change, promoting carbon emission reduction, developing clean and green energy, and promoting political

and diplomatic settlement of the hotspot regions. These countries possess high national development level, high scientific and educational levels and abundant financial strength to solve these problems. More importantly, many existing problems, especially climate change, hotspot conflict regions and the wide gap between the rich and the poor, are related to the historical and realistic policies of these countries. In addition, with the rapid development and deepening of economic globalization and the increase of transnational investment and trade and personnel exchanges, enterprises should also shoulder their corresponding responsibilities of increasing global governance and promoting human rights protection. We need to urge and guide enterprises to better fulfill their social responsibilities, closely combine global governance with human rights protection and make contributions to global governance through effectively fulfilling the concrete responsibility of human rights protection.

Finally, to strengthen global governance and promote the development of human rights protection cause, we also need to avoid the erroneous practices that the Western countries once adopted and now still occasionally adopt in human rights realm, namely, forcing their wills upon others. They have political standards during the process of providing development aid, neglect the different situations in the development of different countries, and interfere into other countries' internal development on the excuse of promoting human rights.

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Human Rights Orientation of Global Governance

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I. Introduction

Global governance brings hope for solving tricky problems facing the entire human race, and provides an opportunity for realizing and safeguarding human rights. In the era of globalization, human rights have become the basic value of common concern, respect and protection by the international community. As the approach and momentum for globalization, global governance should reflect human rights orientation in value, regulation, subjects, objects and effects.

II. Human Rights Orientation in Values of Global Governance

The values of global governance refer to the objectives and ideal conditions to be obtained, i.e., the core values to be safeguarded and respected, by global governance. In *Our Global Neighbourhood*, values of global governance are described by the Commission on Global Governance as "We believe that all humanity could uphold the core values of respect for life, liberty, justice and equity, mutual respect, caring, and integrity."[1] Life, freedom, justice and impartiality are values universally recognized by the humanity, and they transcend national boundaries, nationality, religion and ideology. Those values are defined in international instruments like *United Nations Charters, Universal Declaration of Human Rights, International Convenant on Civil and Political Rights, International Convenant on Economic, Social and Cultural Rights, Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment,* and *International Convention on the Elimination of All Forms of Discrimination,* and *Convention on the Elimination of All Forms of Discrimination Against Women*. Respect for life, freedom, impartiality and justice is respect for basic human rights. Those universally acknowledged values are core values of human rights protection. The ideal objective pursued by global governance is also the ideal conditions to be realized by human rights protection.

1. See *Our Global Neighbourhood*: *the Report of Commission on Global Governance*. Chapter Ⅱ, Oxford University Press.

III. Human Rights Orientation in Regulations of Global Governance

The central task of global governance is to establish a set of global regulations capable of realizing universal values harbored by the entire human race, and maintain a good order in the international community. Oran Young noted in *Global Governance: Towards a Decentralizing World Order* that "Regulations are series of regulations, decision-making procedures and programs for defining social practice, allocating roles for participants and managing the interaction between them."[1] International laws, especially international human rights laws, are a major boost for global governance in their capacity as an important component of the international regulation system. As the foundation of international human rights laws, *Universal Declaration of Human Rights* has been decisive in legislation and practice of human rights in the United Nations, as well as its member states. The document has also promoted regional legislation on human rights. A series of international papers on human rights protection have proposed an institutional arrangement of human rights issues arising from certain areas in the international community. They are extremely helpful in pushing forward the development and perfection of international regulations, and in achieving the core task of global governance – establishment of global regulations. In the meantime, international instruments on human rights protection all take respecting and safeguarding human rights as the institutional objective, and are an important part of global regulations. This is of overriding significance to ensure the right direction of global governance, i.e., with respecting and safeguarding human rights as the ultimate goal.

However, currently the global regulation system has yet to be perfected, and cases of violating international human rights laws and infringing upon human rights can still be found in the international community. Issues like armed conflicts, international terrorism and eco-environment disruption are still happening, and are even getting worse and worse. Presence of those problems will undoubtedly encroach upon the basic rights of relevant persons. The Solution of these problems demands joint efforts by the international community in global governance, to further intensify the concept of humanism and promote the realization and protection of basic human rights.

IV. Human Rights Orientation in the Subject of Global Governance

The subjects of global governance are national governments[2], inter-governmental international organizations and social organizations of global citizens. Aside from the role of important participant to global governance, they are also the major bearers of obligation for safeguarding human rights. In the modern context of global governance, sovereign states

1. Oran R. Young. 2003. *Global Governance: Towards a Decentralizing World Order.*// Yu Keping, Zhang Shengjun. *Globalization: Global Governance*. Social Sciences Academic Press, China, p. 72.
2. Including government agencies and sub-state government authorities.

can promote and protect human rights through domestic legislative, administrative and judicial measures, as well as safeguarding human rights through international cooperation. Without efforts and participation from sovereign states, realization and protection of human rights will be nothing but words on the paper. In addition, official international organizations and informal social organization of global citizens also play a unique role in promoting and safeguarding human rights while taking part in global governance.

While participating in global governance, national governments, government departments and sub-state government authorities should not only exercise corresponding rights, but also shoulder relevant international and domestic obligations to safeguard human rights. Internationally, national governments should perform the obligations in international conventions for human rights that they have signed, and put into practice obligations in international tacit laws and compulsory laws.[1] Seen from the concept of "governance," national governments are just one of the participants in global governance, and are equal to other participants. In view of this fact, quite a few scholars have emphasized that, in the process of global governance, the role of government should be properly handled, with its intervention on certain issues weakened to a degree. This consideration is based on rights standard and protection of human rights.

As the most influential inter-government international organization in the international community, the United Nations has played an important role in promoting global governance. Security, development and human rights are the three pillars supporting its work. As the third pole underpinning the work of the United Nations, human rights are a major task facing the international community in the 21st century. To correct the political and antagonist trend in the work of Human Rights Commission under the Economic and Social Council, the General Assembly in 2006 decided to establish a subordinating affiliate – the Human Rights Council, and authorized it to "on the basis of respecting all countries, regularly review their status in performing human rights obligations and commitments, through universal approaches capable of ensuring fair treatment, according to objective and reliable information." The Human Rights Council exercises human rights protection through Universal Periodic Review. This new mechanism features universality of subjects reviewed, uniformity of standards for review, dialogue in the process, and constructive review results. It is playing an irreplaceable role in pushing human rights to the mainstream within the UN system. Global Citizen Society is an international NGO between states and individuals.[2] In international governance, the role of governments mainly lies in realizing democracy, that of corporations in creating wealth, and that of NGOs in fulfilling the mission of promoting and safeguarding human

1. Xu Xianming. 2008. *Principles of Human Rights Law,* China University of Political Science and Law Press, pp. 297-299.
2. Yu Keping. 2007. I*ntroduction to Global Governance.*// Pang Zhongying. *World Politics: Views from China – Global Governance*, New World Press, p. 16.

rights as a third party.[1] Firstly, NGOs can seek consultative satus at UN, provide information and consultation for decision-making by inter-government international organizations, hold non-governmental forums, and persuade national governments into actively participating in inter-governmental activities, so as to strive for turns in the ultimate legislations and policies that would benefit their goals, and thus protecting and promoting human rights in correspondent fields. Secondly, NGOs can actively launch series of independent activities while participating in inter-government activities, so as to strengthen cooperation and exchanges among themselves and share information and recourses. NGOs' major roles in protecting human rights include: promote institutionalization of human rights protection from the angles of policy and laws, provide legal aids or assistance to victims of human rights, publicize human rights or launch human rights education.

V. Human Rights Orientation in Objects of Global Governance

The objects of global governance include various international issues affecting the common interests of the human race, namely: global security, including international or regional armed conflicts, and production and proliferation of nuclear weapons; ecological environment, including reasonable utilization and exploitation of natural resources, control of pollution sources, protection of rare animals and plants and so on; international economy, including global financial market, polarization between the rich and the poor, and global economic security; transnational crimes, including smuggling, illegal immigration; basic human rights, including racial genocide, massacre of civilians, disease contagion, famine and poverty, and unjustice in the international community.[2] Judged individually, the object of global governance seems to include "basic human rights" only. However, judged comprehensively, the rest objects of global governance all concern human rights protection in the end. For instance, control of global security can be boiled down to protection of individual human rights from domestic, regional and global armed conflicts, and nuclear deterrence and nuclear strike; management of environmental pollution can be boiled down to protection of environment rights and health rights of victimized groups; governance of polarization between the rich and the poor is to promote and protect people's right to development in developing countries. Each time the global governance solves a tricky problem within a certain field; the basic human rights of certain groups will be brought under scrutiny and protected. Because the objects of global governance cover an extensive range, basic human rights within various fields will be underpinned and safeguarded. Global governance will promote establishment of a multi-partite, multi-layered, and multi-dimensional human rights protection system.

1. Xu Xianming. 2008. *Principles of Human Rights Law*, China University of Political Science and Law Press, p. 360.
2. Yu Keping. 2007. *Introduction to Global Governance*.// Pang Zhongying. *World Politics: Views from China – Global Governance*, New World Press, p. 17.

VI. Human Rights Orientation in the Effects of Global Governance

The core task of global governance lies in establishing a global regulation system for protection of core values acknowledged by the entire human race. Therefore, the effect of global governance is to a large extent dependent on the performance of global regulations, especially the effectiveness of international regulations. Regulations can be defined as "a whole set of implicit or explicit principles, norms, rules and decision-making procedures pooled together in an assigned field in international relations, around the expectations of their actor." In the definition, principles are beliefs of facts, reasons and equity. Norms are code of conduct defined by rights and obligations. Rules are special directions or forbiddance for actions. Decision-making procedures are common practices of making and applying collective choices.[1] The effectiveness of international laws is critical for that of international regulations. The development of international laws will promote the development of international regulations, and thus promote that of global regulations. Good performance on the part of global governance would mean more promotion and protection for human rights. Therefore, promotion of international laws, especially international human rights laws, will benefit global governance, and promote and protect human rights on a wider range and deeper level.

VII. Conclusion

From the above argumentation we can conclude that global governance features respect for, protection and promotion of human rights orientation in selection of values, establishment of global regulation, and subjects, objects and effects of governance. Upholding the same value objectives as international human rights protection, global governance takes establishment of an effective global regulation as its core task. Its ultimate goal resides in solving common problems facing the human race, maintaining good order in the international community, realizing the universal values and promoting and safeguarding human rights, by pulling together multi-layered subjects and persuading them into joint actions. Only with voluntary orientation for human rights can global governance stay on the right track of development, and pool the wisdoms and strengths to realize its objectives. Deviation from the human rights orientation would mean abortion or premature death for global governance.

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1. Wu Song. 2000. *Analysis of the Concept of International Regulation*. International Politics Research, (1): p. 128.

An Analysis of Global Governance's Double Effects on Protection and Development of Human Rights

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In the age of globalization, human rights have gradually become a global issue. Especially in the process of global governance, full implementation and protection of human rights are important components. However, global governance exerts double effects on the protection and development of human rights. On one hand, global governance shares many common focuses with human rights as both are involved in democracy and the rule of law as well as the protection of civil rights. It can be said that global governance facilitates the implementation of human rights. On the other hand, global governance has weakened the authority of sovereignty to some extent. Some developed countries or international organizations interfere with the internal affairs of some nation states and impact on the protection and development of human rights of these nation states in the name of global governance. Therefore, to conduct a systematic study in the relationship between global governance and human rights and to view the actual situation of human rights from the perspective of global governance have great theoretical and practical significance in the theory construction, protection and development as well as internationalization of human rights.

I

Since the 21st century, global governance has become an international hot issue and drawn comprehensive attention from many countries. In J. N. Rosenau's famous publications *Governance without Government* and *Governance in the Twenty-first Century*, he proposed the proposition of global governance. He pointed out that global politics, economy and even culture are undergoing an integration and fragmentation never seen before; under such an international political, economic and cultural background, the focus of politic authority is shifted; thus, governance of human society is shifted towards multi-level governance from the government governance in which countries are the subjects; and global governance is the most important. Global governance is the extension and application of governance in the globe. UN's "Commission on Global Governance" delivered in 1995 a report in which

the concepts of governance and global governance are defined: "Governance is the sum of many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action taken;" "At the global level, governance has been viewed primarily as intergovernmental relationships, but it must now be understood as also involving non-governmental organizations (NGOs), citizens' movements, multinational corporations, and the global capital market."[1] Just as Anthony McGrew, a famous scholar who studies global governance said: "by global governance is meant not only the formal institutions and organizations through which the rules and norms governing world order are (or are not) made and sustained – the institutions of state, intergovernmental cooperation and so on – but also those organizations and pressure groups – from MNCs, transnational social movements, to the plethora of non-governmental organizations – which pursue goals and objectives which have a bearing on transnational rule and authority systems. Clearly, the United Nations system, the World Trade Organization and the array of activities of national governments are among the central components of global governance, but they are by no means the only components. If social movements, non-governmental organizations, regional political associations and so on are excluded from the notion of global governance, its form and dynamics will not be properly understood."[2]

The above basic connotation of global governance exhibits that its subjects are various and presents the non-governmental demand for national territory, sovereignty and citizens. Therefore, global governance has exerted certain impact on the original ruling authority of nation states and the sovereignty. From the perspective of protection and development of human rights, global governance and protection & development of human rights have internal logical links. The implementation of global governance renders great impetus to the development of human rights cause. Meanwhile, as global governance is governance at the international level, it has some differences from the protection & development of human rights and constrains the protection and implementation of human rights.

II

Global governance plays a positive role in promoting the protection and development of human rights cause. Actually, the two enjoy a close relationship. In the age of globalization, government is no longer the sole subject of political world. The international community starts to depend on coordination of governments and NGOs, countries, citizens and societies

1. Ingvar Carlsson & Shirdath Ramphal: *Our Global Neighborhood: the Report of the Commission on Global Governance* [M]. Beijing: China Translation & Publishing Corporation, 1995 edition, page 2.

2. David Held et al. *Global Transformations: Politics, Economics and Culture* [M], Beijing: Social Sciences Academic Press (China), 2001 edition, page 70.

to operate and manage public affairs. Global governance has ever become a mode of public administration. The core of global governance is to establish, develop and protect a new international political & economic order that protects all mankind's security, peace, development, welfare, equality and human rights. Therefore, the new international political and economic order bearing the value of global governance is to be helpful to facilitate the implementation and development of human rights cause. Details are presented as follow:

Firstly, the universality of human rights and the value pursuit of global governance are harmonious. The universality of human rights means that all people are entitled to enjoy the basic rights. For example, all people are born to enjoy right to life, right to live, right to security, right to liberty and right to dignity, etc. Advocators of global governance hold that the value of global governance lies in pursuing the common values of human beings beyond countries, races, religions, ideologies, economic development levels. They defined the connotation of "global common values" as liberty, equality, democracy, fairness and justice. In order to implement these common values globally, the Commission on Global Governance has stated corresponding rights and obligations for global citizens. These rights include: a secure life, equitable treatment, an opportunity to earn a fair living and provide for their own welfare, the definition and preservation of their differences through peaceful means, participation in governance at all levels, free and fair petition for redress of gross injustices, equal access to information and equal access to the global commons. At the same time, all people share a responsibility to: contribute to the common good; consider the impact of their actions on the security and welfare of others; promote equity, including gender equity; protect the interests of future generations by pursuing sustainable development and safeguarding the global commons; preserve humanity's cultural and intellectual heritage; be active participants in governance; and work to eliminate corruption.[1] Therefore, the value pursuit of global governance presents its internal unity with the universality of human rights. The implementation of these values of global governance will strongly promote the protection and development of human rights and set theoretical and practical foundation for implementing basic human rights, such as right to life, right to live, right to security, right to liberty, right to dignity, right of equality and right to development.

Secondly, global governance will improve the protection of human rights through facilitating the reform of public sectors. In the process of global governance, such international organizations, as World Bank and WTO, have depended on global governance to facilitate the reform of public sectors in developing countries in order to improve public service of these governments. The delivery of public services relates to the basic human rights of each person. It has been proved that scientific decisions, legitimate administrative

1. Yu Keping, *Introduction to Global Governance* [J], Marxism and Reality, Volume 1, 2002.

proceedings, prohibition against power abuse, reasonable discretion of public institutions can provide conditions for protecting the basic human rights of ordinary people. Only when public sectors improve their management effects and service quality and level, can the protection of human rights maintain at a relatively high level. Global governance reshapes the relations between governments and citizens, governments and markets as well as governments and societies to a new interactive and cooperative one by promoting the reform of public sectors and promotes public credibility and acceptance of governments. Thus, the service capacity of governments is strengthened and all citizens are equal to enjoy public services and achievements of the reform. Therefore, the reform of public sector, if successfully facilitated by global governance, will improve the protection of human rights in a country.

Thirdly, global governance helps to facilitate the international protection of human rights. In the age of globalization, human rights need certain international protection. International protection of human rights means that international community, in accordance with a nation's sovereignty and acknowledged basic principles of international law, establishes international human right rules and principles that are basically accepted by the country, endows the country with international obligations of respect and implementation, and entrusts international bodies or legal mechanism proved by the relevant treaties of human rights to supervise the implementation of the obligation. In the process of global governance, a succession of international human rights documents formulated by UN and other international organizations are deemed as international code of conduct that should be followed by all countries. Therefore, objectively, it is a fact that international human rights law has become a branch of international law. Moreover, its status in the international law has gradually improved, which provides legal basis for the international protection of human rights. For instance, most countries respect and follow pertinent regulations stipulated by *Universal Declaration of Human Rights*, *International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights*, etc, which aims to promote and protect human rights. It is thus clear that global governance helps to facilitate the international protection of human rights.

III

Global governance raises challenges for the international relation mode taking countries as the main actors. "In the current international political world, the international system that is mainly made up of relations between sovereign countries is under great change by now; a compound political world-scale framework consisting of various subjects, including sovereign countries is forming and it is the international system."[1] It means that in this system of global

1. Hosino Teruyoshi, *World Politics at the Age of Globalization – Behavior Subjects and Structure of World Politics* [M].

governance, various subjects take part into the global politics, including great powers that have great influence on international affairs and all countries in the world; national and non-national actors; inter-governmental and non-governmental international organizations as well as transnational corporations, etc. Different behavioral subjects have different social development degrees, economic strengths, value pursuits, and influences and value demands of global governance, which results in certain restrictions on the protection and development of human rights in global governance.

Global governance rules out the particularity of human rights. Just as the aforesaid, the basic values of global governance lie in liberty, equality, democracy, fairness and justice, etc. These values are the common wealth of human beings; however, countries and nations with different social systems and development levels hold some different values. Meanwhile, these values will expand as time goes by and embody different connotation of various regions. Abstract liberty, equality, democracy and so on cannot become the common values accepted by all nations. In addition, in the current international political system, western developed countries and blocs of big powers have a greater say in the management of global affairs, which results in the formation of international order under the manipulation of great powers. The exposition about human rights, liberty and democracy expressed by advocators of global governance, is more than an advocate of western values and the result of western cultural evolution than the consensus after various cultural conflicts, dialogues and integration. Advocators of global governance take the western-style democracy, liberty and human rights as "global common values" and neglect the particularity of human rights in different countries and nations where the implementation and development of human rights are limited by a nation's economy, politics, culture and historical traditions. Nowadays, global governance rejects this particularity of human rights, which leads to a lack of global value identification. Therefore, the rejection of particularity of human rights, together with the deficiency of common value system, becomes the key problem limiting global governance.

In the process of global governance, developed countries tend to place emphasis on the universality of human rights; on the contrary, developing countries place relatively high value on the particularity of human rights. Difference focuses on human rights cause unnecessary disputes and conflicts on human right issues to countries across the world and hinder international cooperation. In fact, human rights enjoy the unity of universality and particularity. Only when we acknowledge the universality and particularity of human rights, can we better promote the development of human rights cause and the friendly cooperation between countries and reduce troubles and confrontations.

Global governance implies the orientation of "human rights above sovereignty." The

Beijing: Social Sciences Academic Press (China), 2004 edition, page 1.

theory of global governance brings impact on the original ruling authority of nation state and effects on sovereignty of nation state. In global governance, on one hand, every country is required to take a reform on the original political and economic institutions to meet the demand of transnational capital; on the other hand, each nation has to internationalize domestic affairs, both of which will definitely weaken the sovereignty of nation state. On the basis of the proposition of global governance, "human rights above sovereignty" becomes the orientation of global governance. Firstly, "human rights above sovereignty" seems to better protect human rights. However, from advocators of global governance, it is a western view of human rights which sets the standard of human rights above the sovereignty of developing countries. Especially some countries and international organizations that play a leading role in the global governance take "human rights above sovereignty" as the theoretical foundation to carry out hegemonism and infringe upon the sovereignty of other countries; ideologize "human rights above sovereignty" and change the protection of human rights into means of controlling and enslaving developing countries. Secondly, the foundation of global governance is neoliberal economic theory, depending on the privatization of market to get efficiency; however, the protection and development of human rights oppose fully dependence on market, for market takes profits instead of the living conditions and basic rights of disadvantaged groups as priority. "But while political liberalism was the progenitor of rights, its philosophy has been less successful in explaining their nature."[1] Thirdly, the proposition of "human rights above sovereignty" twists the relationship of human rights and sovereignty and negates the sovereignty principle acknowledged by international law and the principle of non-interference of internal affairs, providing theoretical basis for some countries and international organizations to the banner of human rights to interfere with international affairs of other countries and put forward hegemonism and power politics. It is clear that "human rights above sovereignty" essentially violates the basic spirits of *UN Charter* and international human rights law; it is the theoretical basis for the minority western developed countries to control the sovereignty of developing countries and push their new colonial policy of "neo-interventionism" for promoting global hegemonism. In fact, nation state remains the subject of global governance and its sovereignty cannot be weakened. Sovereignty ensures the protection of human rights and human rights are the goal of sovereignty. To protect sovereignty and to protect human rights are not contradictory and should be unified. For a country, only when it has sovereignty independence, can it seek advantages and avoid disadvantages in the governance and promote its human rights. Without sovereignty, the protection and development of human rights are empty talk.

In conclusion, with the development of globalization, seeking common ground while

1. Costas Douzinas: *The End of Human Rights* [M]. Nanjing: Jiangsu Renmin Press, 2002 edition, page 3.

shelving differences, dialogues and cooperation, increasing understanding as well as reducing confrontations has become an inevitable trend. Under the framework of international human rights legal system, countries should depend on full dialogues, exchanges and cooperation to gain more respect and protection of human rights in the international community. In the process of global governance, only when we base on the unity of universality and particularity of human rights, the unity of human rights and sovereignty as well as the unity of domestic and international protection of human rights, can human rights be truly safeguarded, improved and developed and finally fully facilitate the sound development of global governance.

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Development History of "The Responsibility to Protect" and Problems in Implementation Process

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After the Cold War, the international community have had heated discussions on issues including the relationship between human rights and sovereignty and relevant humanitarian intervention, hence the concept of "The Responsibility to Protect" arose at the historical moment. Since its putting forward in 2001, the very concept has caused worldwide attention: as evidenced by the fact that it has been adopted by the Secretary General of the United Nations and has been integrated into documentations of the World Summit. Although application of the concept is challenged in many ways, the introduction of the concept itself is viewed as an important exploration for human rights and global governance.

I. Development History of "The Responsibility to Protect"

It has been 9 years since the official introduction of the concept of "The Responsibility to Protect" back in 2001, its development history falls into the following stages:

1. The first stage: prior to December 2001, the concept is in the embryonic and abuilding stage.

As we try to address the frequent humanitarian crisis after the Cold War, beyond the traditional means of UN peacekeeping, people have explored new and more effective ways and concepts such as "the right to intervene," "human security," "individual sovereignty" and "responsible sovereignty." All these concepts have great implications for the concept of "The Responsibility to Protect." At the UNGA (the United Nations General Assembly) 2000, Kofi Annan, the Secretary General of the United Nations called for international consensus on issues concerning humanitarian intervention. As part of the efforts to respond to the proposal, the Canadian Government suggested establishing an "International Commission on Intervention and State Sovereignty (ICISS)"[1] as an international coordinating body to address relevant issues. In September 2009, at the UN Millennium Summit, the Canadian president Jean Chrétien announced the establishment of the Commission. ICISS positions itself as an independent international organization with an aim to promote communication

1. International Commission on Intervention and State Sovereignty, ICISS for short.

between the concepts of "human rights protection" and "respect for sovereignty." It is also designed to enhance holistic debate on international community's intervention in relationship between sovereignty countries and help eliminate internal differences in UN between military intervention and state sovereignty protection.[1] The Canadian government also appointed Gareth Evans, former Australian Foreign Minister, then President Emeritus of the International Crisis Group and Mohamed Sahnoun, a national of Algeria, former Special Adviser of Secretary-General and UN special representative as co-Chairman of the Commission with other 10 members from Canada, the US, Russia, Germany, South Africa, the Philippines, Switzerland, Guatemala and India. Among them are renowned scholars or political figures. The Commission is funded by the Canadian government and some important International Foundations. From January to July 2001, the Commission held a series of roundtables and symposiums in Beijing, Cairo, Geneva, London, Maputo, New Delhi, New York, Ottawa, Paris, St. Petersburg, Santiago and Washington in a bid to hear and reflect different streams of international opinions on the subject, a genuine effort to incorporate many of the views from over 200 experts, academics and representatives from NGOs so as to submit the report on *The Responsibility to Protect* to Kofi Annan, the Secretary General of the United Nations.

2. The second stage: from December 2001 to September 2005, the concept of "The Responsibility to Protect" gradually entered into political agenda.

In December 2001, the Commission submitted a report named *The Responsibility to Protect*[2] to Kofi Annan, the Secretary General of the United Nations and put forward the concept of "The Responsibility to Protect" officially.[3] According to the report, core meaning of "The Responsibility to Protect" is that a country is obligated to protect its citizens from avoidable disasters, to be specific: massacre, rape and famine. If a country is unwilling or unable to do so, that responsibility must be borne by the international community. It is the first time that the international community explicitly introduced the concept of "Responsibility to Protect" and made comprehensive explanation.

After that we have seen increased debates concerning this concept, report by The High

1. Wei Zonglei, Qiu Guirong, Sun Ru: *Western "Humanitarian Intervention" Theory and Practice,* Current Affairs Publishing House, Beijing, January edition of 2003, page 95.

2. *Report of the International Commission on Intervention and State Sovereignt: The Responsibility to Protect* (see Chinese version), visit http://www.iciss.ca/pdf/Chinese-report.pdf.

3. Beyond forward and abstract, the report elaborates "The Responsibility to Protect" in 8 chapters and illustrates its base, responsibility foundation, key elements (The Responsibility to Protect, the responsibility to respond, the responsibility to rebuild) and military intervention principle. See http://www.iciss.ca/pdf/Chinese-report.pdf, the Commission also released the add-content of the report (all together 398 pages) which gives a thorough introduction of the context, document literature of the research and the major issues discussed.

Level Panel on Threats, Challenges and Change[1]and report by the General-Secretary in 2005 all make interpretations about the concept and constantly push forward the concept. At the World Summit held in September 2005, the concept was written into the *2005 World Summit Outcome* and it means that the concept was officially made on the UN agenda.

In December 2004, The High Level Panel on Threats, Challenges and Change submitted a report named *A More Secure World: Our Shared Responsibility* to Kofi Annan. It clearly elaborates on the relationship between "sovereignty and responsibility" in the new era and building on this the international community must shoulder "The Responsibility to Protect." The report points out that the concept of State Sovereignty "clearly carries with it the obligation of a State to protect the welfare of its own peoples and meet its obligations to the wider international community. But history teaches us all too clearly that it cannot be assumed that every State will always be able, or willing, to meet its responsibilities to protect its own people and avoid harming its neighbours. And in those circumstances, the principles of collective security mean that some portion of those responsibilities should be taken up by the international community."[2] After reviewing frequent humanitarian disasters happened in 1990s, the report points out that "the issue is not the 'right to intervene' of any State, but the 'responsibility to protect' of every State when it comes to people suffering from avoidable catastrophe – mass murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease. And there is growing acceptance that while sovereign Governments have the primary responsibility to protect their own citizens from such catastrophes, when they are unable or unwilling to do so that responsibility should be taken up by the wider international community."[3] The report by The High Level Panel on Threats, Challenges and Change timely echoed the new concept introduced by ICISS so that it can be integrated into the agenda of the Secretary General.

At the 59th General Assembly of the United Nations held on March 31, 2005, Kofi Annan made a report named *In Larger Freedom – To*wards *Development, Security and Human Rights for All*. The report endorsed the above two reports and believed that we must take actions. The fourth part reads that "we must embrace the responsibility to protect, and, when necessary, we must act on it. This responsibility lies, first and foremost, with each individual State, whose primary raison d'être and duty is to protect its population. But if national authorities are unable or unwilling to protect their citizens, then the responsibility

1. Kofi Annan, the Secretary General of the United Nations announced the establishment of "The High Level Panel on Threats, Challenges and Change" at the 58th Session UNGA with an aim to provide insights on how to achieve visions identified by the *UN Charter* and how to ensure collective security for all in September 2003.

2. *The High Level Panel on Threats, Challenges and Change: A More Secure World: Our Shared Responsibility*, U.N. Doc. A/59/565, para. 29.

3. Ibid, para. 201.

shifts to the international community."[1] "The time has come for Governments to be held to account, both to their citizens and to each other."[2] It is, for the first time, that the Secretary-General officially spread the basic connotation of "The Responsibility to Protect" to the world and called for serious consideration of the world.

After arduous negotiations, on October 24, 2005 the 60th Session of UN General Assembly adopted *The 2005 World Summit Outcome*. The fourth part of the resolution, "Human Rights and the Rule of Law" particularly emphasizes the "Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" with more details explained in other 2 paragraphs.[3]

For the first time, the international community made it clear in the form of declaration that most of the countries at large agreed that the international community also shares the responsibility to protect its population given certain circumstances. In April 2006, while the UN Security Council was discussing ways to protect civilian amid armed conflict, they adopted a resolution to confirm "The Responsibility to Protect" mentioned in *The 2005 World Summit Outcome*.[4]

3. The third stage: from September 2005 to date, it is a period featured by wide discussion on the concept of "The Responsibility to Protect."

This stage is defined by more academic achievements about the concept with its focus shifting to how to put it into practice. On top of that, one obvious feature is that while people speak highly of the concept, people start to reflect and criticize the concept.

On July 23, 24 and 28, 2009, when the 63rd UNGA held a debate on the Secretary General's report *Fulfill the Responsibility to Protect,* 94 representatives of states expressed understanding of and concerns on the concept. The majority welcomed the report and endorsed that the report makes "three backbone suggestions" for us to fulfill "The Responsibility to Protect" and they believed that former two backbone suggestions are of greater significance. The majority held that "Responsibility to Protect" originated from the existing constraints among the *UN Charter,* the International Human Rights Treaties and International Humanitarian Law and they endorsed that the concept should be strictly limited to the scope of four crimes: genocide, war crimes, ethnic cleansing and crimes against humanity. Many countries, particularly African countries, have recognized the pioneering role the African Union plays in the implementation of the development of the concept.

1. Kofi Annan: *In Larger Freedom – Towards Development, Security and Human Rights for All*, U.N. Doc. A/59/2005, para. 135.
2. Ibid, para. 132.
3. *The 2005 World Summit Outcome*, U.N. Doc. A/RES/60/1, para. 138-139.
4. *"The Security Council… Reaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity."*

Concern and divergence also coexist. Some countries worried that during the implementation process of the concept there will be selective application or double standard so that leading countries will abuse the concept. One thirds of the countries appealed that no permanent members of the UN Security Council should use their veto against "The Responsibility to Protect." Only few countries proposed that to reform the UN Security Council is prerequisite to the implementation of "The Responsibility to Protect." As the UN Security Council fails to take effective measures, all countries remain divided in terms of different position between UNGA and the UN Security Council.

It is the first time that all countries held formal seminar to discuss "The Responsibility to Protect" under the framework of the UN. Although prior to the seminar, some NGOs were worried about the negative impact the seminar might bring, generally speaking, the seminar is successful[1].

II. The Problems Facing the Execution of "The Responsibility to Protect"

The initial reports defined a wide field where "The Responsibility to Protect" is applicable. However, as the concept received more and more attention and was gradually put on the political agenda in many countries, and people were expecting it to play a due role in reality, it is found that the field it applied to was narrowing and that consensus on how to exercise it has yet to be reached.

1. The narrowing field available

From the above important documents, we can see that the international community has accepted the concept of "The Responsibility to Protect." But we should be aware that these documents have different interpretations about the field the concept of "The Responsibility to Protect" applies to. And the fine line between these documents about the field lies in not only the language, but also the deep meaning behind it.

The reports by International Commission on Intervention and State Sovereignty and the High Level Panel on Threats, Challenges and Change all define the protection field by listing examples. They all hold the view that "The Responsibility to Protect" is a responsibility to protect their own citizens from avoidable catastrophe. But the catastrophes the former one listed are "large scale loss of life or ethnic cleansing, actual or apprehended,"[2] while the latter one enumerated "mass murder and rape, ethnic cleansing by forcible expulsion and terror, and

1. The International Coalition for the Responsibility to Protect (ICPtoP) said "*Our primary concern, however, was that a debate could provide the opportunity for skeptical governments to re-negotiate the norm and possibly result in a resolution that watered down or added caveats to the 2005 World Summit agreement.*"

2. International Commission on Intervention and State Sovereignty: The Report of "*The Responsibility to Protect*," foreword and p. 52, http://www.iciss.ca/pdf/Chinese-report.pdf.

deliberate starvation and exposure to disease."[1] Secretary-General Kofi Annan in the annex of his report limited the catastrophes to "Genocide, Ethnic Cleansing and crimes against humanity."[2] *The 2005 World Summit Outcome* defined "The Responsibility to Protect" as "The responsibility to protect its own citizens from genocide, war crimes, ethnic cleansing and crimes against humanity." Compared with Secretary-General's report, the Resolution of the meeting added "war crimes." But it obviously has narrower protection field than the reports by International Commission on Intervention and State Sovereignty and the High Level Panel on Threats, Challenges and Change. The acts of creating famine deliberately and spreading disease by design are excluded from the Resolution, and genocide and ethnic cleansing it listed are more limited than massacre. The reports by International Commission on Intervention and State Sovereignty and the UN High Level Panel on Threats, Challenge and Change were written in descriptive language. And the report by Secretary-General and the Resolution of the General Assembly quoted the crimes in the international law and treaties, thus more convenient to determine and react in practice. On one hand, it is because the makers of the documents are different in nature. On the other hand, it indicated that different countries held different views on the question of "The Responsibility to Protect" and that the Resolution's passage was the result of a reached compromise.

As to whether humanitarian catastrophe caused by natural disasters should be included in the field of "The Responsibility to Protect," strong disagreement arose among the countries attending the meeting. A few countries like France, Croatia and Slovakia were for that. *The 2005 World Summit Outcome* in its statement made no specifications about the actual situations that would incite the four crimes. And it was inherited from the report by "International Commission on Intervention and Sovereignty," which defines the actual situations that incite the four crimes as "civil war, rebellion, suppression and paralysis." But the definition is obviously too broad. The international document is the brainchild of negotiations between countries, a rights-assigning process. In this case, only the catastrophes stipulated explicitly in the international document can be deemed as ones that "The Responsibility to Protect" deals with. Therefore, it seems fair to exclude humanitarian catastrophe caused by natural disasters out of the field.

2. Different opinions on how to act

As to how to perform the concept of "The Responsibility to Protect," the international community has reached a consensus: sovereign states have a responsibility to protect

1. *Report of the High-level Panel on Threats, Challenges and Change, "A more secure world: Our shared responsibility,"* U.N. Doc. A/59/565, para. 201.

2. Kofi Annan, "*In Larger Freedom: Towards Development, Security and Human Rights for All*," U.N. Doc. A/59/2005, Annex. "*I urge Heads of State and Government to… Embrace 'the responsibility to protect' as a basis for collective action against genocide, ethnic cleansing and crimes against humanity, and agree to act on this responsibility.*"

their own citizens, but when they, for subjective or objective reasons, are unable to do so, that responsibility must be borne by the international community; The United Nations, especially the Security Council must play a critical role in the act. When it is necessary to act, preventive options shall be exhausted before the use of coercive measures, with military intervention as the last resort.

The report by International Commission on Intervention and State Sovereignty has put forward three stages of the development history of "The Responsibility to Protect" which are "Prevent-React-Rebuild." To ensure the preventive measures, there are several instruments can be employed, political, diplomatic, economic, legal and military.[1] The responsibility to react may take coercive measures like sanctions and international prosecution, and in extreme cases military intervention.[2] The High Level Panel on Threats, Challenges and Change proposes an approach to how to react, "it spanning a continuum involving prevention, response to violence, if necessary, and rebuilding shattered societies. The primary focus should be on assisting the cessation of violence through mediation and other tools and the protection of people through such measures as the dispatch of humanitarian, human rights and police missions. Force, if it needs to be used, should be deployed as a last resort."[3] Secretary General Kofi Annan thinks that "the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect the human rights and well-being of civilian populations. When such methods appear insufficient, the Security Council may out of necessity decide to take action under the *Charter of the United Nations*, including enforcement action."[4] *The 2005 World Summit Outcome* has followed Secretary General's opinion and has provided concrete guidance. Peaceful options should be considered first before any coercive measures that should be exercised collaboratively with the regional organizations. And the Security Council is not responsible for formulating ordinary rules, but rather deals with the cases, once at a time.

III. Different Positions on "The Responsibility to Protect"

There are over two hundred countries and regions around the world. We classify attitudes of all the countries into three categories in line with their positions.

1. The countries that are for "The Responsibility to Protect." These countries can

1. International Commission on Intervention and State Sovereignty: *Report of "The Responsibility to Protect"* (Chinese Version), p. 17.

2. International Commission on Intervention and State Sovereignty: *"The Responsibility to Protect"* (Chinese Version), Synopsis.

3. Report of the High Level Panel on Threats, Challenges and Change, "*A more secure world: Our shared responsibility*," U.N. Doc. A/59/565, para. 201.

4. Kofi Annan, "*In Larger Freedom: Towards Development, Security and Human Rights for All*," U.N. Doc. A/59/2005, para. 135.

be subdivided into two groups.

The first group is the medium-size developed countries, such as Britain, France, Canada, Australia, Spain, Germany and northern European countries. The main reasons why these countries are strongly for "The Responsibility to Protect" include: First, these countries enjoy favorable domestic and international environment, thus having no concerns about being intervened by other countries exploiting the concept of "The Responsibility to Protect." Second, they have a tradition of supporting humanitarian actions which has gradually formed since the establishment of UN. They respect and protect human rights, and value it as an important part of their domestic and diplomatic policy. Third, they see participating in the humanitarian act as an opportunity to enhance their soft power and their international influence by devoting to assisting the people that suffer in the humanitarian crisis.

The second group consists of politically-stable African countries. There are two reasons why these African countries favor "The Responsibility to Protect." One is that they sense little chance of being intervened in the name of humanitarianism. The other is that as the forerunners exploring collective security in Africa, they have become accustomed to the intervention modes conducted by the African Union or the African Union and UN collaboratively, and are optimistic about the prospect of "The Responsibility to Protect."

2. Countries that have reservations and have proposed constructive ideas

Many countries belong to this category, including developed countries such as the United States and Japan and developing countries like China, Brazil and Indonesia. Although they are not against the efforts to promote "The Responsibility to Protect" by the African Union and UN, they have expressed their due concerns and believe that the concept is still not mature enough and needs to be improved and guaranteed by a reasonable system before being put into practice.

Taking China for example, China holds a very prudent attitude towards the concept of "The Responsibility to Protect" and believes that a further discussion is needed before applying it in practice since all countries have not yet reached any consensus on this issue. In *The Document about China's Position on UN's Reform* published in July 2005 has elaborated its opinion on "The Responsibility to Protect." It reads "Each state shoulders the primary responsibility to protect its own population. However, internal unrest in a country is often caused by complex factors. Prudence is called for in judging a government's ability and will to protect its citizens. No reckless intervention should be allowed. When a massive humanitarian crisis occurs, it is the legitimate concern of the international community to ease and defuse the crisis. Any response to such a crisis should strictly conform to the UN Charter and the opinions of the regional organization concerned should be respected. It falls on the Security Council to make the decision in the frame of UN in light of specific circumstances which should lead to a peaceful solution as far as possible. Wherever it involves enforcement

actions, there should be more prudence in the consideration of each case." This is principled with China's previous position[1]. Besides, China favors the opinion of the Group of Non-Aligned Countries on "The Responsibility to Protect."[2]

In the following years, China has made a number of speeches on the international stage in which the above statement is supplemented with more details. China stresses that the field of the concept is subject to the regulations stipulated in the documents of *The UN World Summit Outcome*. China thinks that the statement of "resolution 1674 (2006) reaffirmed a principle expressed in the outcome document of last year's summit (General Assembly resolution 60/1): the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. China believes that that is not the same as the simple concept of the responsibility to protect."[3] "We believe, it is, therefore, not appropriate to expand, willfully interpret or even abuse this concept… All sides should continue to stick to the relevant agreed elements of the Summit Outcome while interpreting or applying this concept."[4] In addition, China explicitly objects to applying the concept of "The Responsibility to Protect" to the humanitarian crisis caused by natural disasters.[5] China believes that in order to protect the civilians we must address the root causes of the conflict.[6]

3. The Countries that are against "The Responsibility to Protect"

There are a small number of such countries as Cuba, Venezuela, Sudan, Nicaragua and Sri Lanka. These countries themselves are weak and some are even confronted by

1. Statement by Counselor Xie Bohua at Informal Consultations on Rule of Law, Human Rights and Democracy (Cluster III) of the Secretary-General's Report, New York, 19 April, 2004. http://www.mfa.gov.cn/ce/ceun/eng/lhghyywj/smhwj/wangnian/2005/t192895.htm (July 26, 2009).

2. "*On questions relating to the development of criteria for the use of force, 'the responsibility to protect,' and human security, China has already clearly stated our position. We understand and support the proposals of the non-aligned movement in this regard*." Statement by Ambassador Zhang Yishan at the Informal Meeting of the Plenary on the Draft Outcome Document of the GA High-level Plenary Meeting of September 2005, New York, 28 July 2005. http://www.mfa.gov.cn/ce/ceun/eng/lhghyywj/smhwj/wangnian/2005/t206053.htm (July 26, 2009).

3. Statement by Ambassador Liu Zhenmin at the Security Council's Open Debate on "*Protection of Civilians in Armed Conflict*," New York, 28 June, 2006. http://www.mfa.gov.cn/ce/ceun/eng/lhghyywj/smhwj/wangnian/2006/t260820.htm (July 26, 2009).

4. Statement by Ambassador Liu Zhenmin at the Security Council Open Debate on "*Protection of Civilians in Armed Conflict*," New York, 4 December, 2006. http://www.mfa.gov.cn/ce/ceun/eng/lhghyywj/smhwj/wangnian/2006/t282528.htm (July 26, 2009).

5. "*To introduce this concept into the area of disaster relief will not be helpful to achieving international consensus on this concept; rather, it will only lead to further confusion*." Statement by H.E. Ambassador Liu Zhenmin, Deputy Permanent Representative of China to the UN, at the Sixth Committee of the 63rd Session of the UN General Assembly, on Item 75: Report of the International Law Commission on the Work of its 60th Session – Part Three, New York, 3 November, 2008. http://www.mfa.gov.cn/ce/ceun/eng/lhghyywj/smhwj/2008/t520980.htm (July 26, 2009).

6. Statement by Ambassador Zhang Yishan at the Security Council's Open Debate on "*the Protection of Civilians in Armed Conflict*," 9 December, 2005. http://www.mfa.gov.cn/ce/ceun/eng/lhghyywj/smhwj/wangnian/2005/t226262.htm (July 26, 2009).

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separatist groups internally, thus concerning seriously about being intervened in the name humanitarianism by other countries and country groups. Cuba has long been suffering economic sanctions. Contradictions between Venezuela and the US emerge ceaselessly. The Sudanese government is badly battered by the question of Darfur. Nicaragua in its history has been invaded by the US several times. Sri Lanka is faced with anti-government armed forces internally. All these elements account for their pessimistic views on this concept.

From the above elaboration and analysis, we can see that each country holds a different attitude towards the issue of "The Responsibility to Protect." In the group of the developed countries, there is no consensus reached, and so is the group of developing countries. They divide over a series of important issues such as the connotation and the field of "The Responsibility to Protect" and how to exercise it. The division will be further widening if the concept is applied to specific questions. Therefore, it is currently still very difficult to apply the concept of "The Responsibility to Protect."

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Bringing International Human Rights Norms Home
– the Cooperation between the NHRIs and the United Nations

Zhang Wei
China

1. Legal Framework for the Participation of NHRIs in the UN

National Human Rights Institutions (NHRIs), namely those defined by the United Nations (UN) as 'a body which is established by a government under the constitution, or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights.'[1] They remain a fairly recent phenomenon, one which has been seen exceptional growth from the 1990s onwards.[2] A recent UN Survey showed that the number of NHRIs began to grow in the Americas in the early 1990s, in Africa in the mid-1990s, in the Asia Pacific in the late 1990s, and in Europe since the mid 1990s.[3]

According to the *Paris Principles*, the mandate of the NHRIs shall be established by the constitution or legislative texts. However, the *Paris Principles* do not require certain type of legislation to regulate the NHRIs. The most effective way to establish NHRIs is by constitution, followed by a primary legislation of the Parliament. Naturally, constitutions provide a framework for the fundamental authorities of the State and regulate their structures without details. Based on the constitution, the Parliament enacts detailed laws or other primary legislations.

While dealing with the competence and responsibilities, the *Paris Principles* suggest the NHRIs cooperate with international and regional human rights organizations, in particular, the United Nations. Those mandates are:

– To promote and ensure the harmonization of national legislations, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

– To encourage ratification of the above-mentioned instruments or accession to those

1. United Nations, *A handbook on the establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights (Professional Training Series No. 4)*, at para. 39.
2. Office of the High Commission for Human Rights (OHCHR), *Survey on National Human Rights Institutions – Report on the Findings and Recommendations of a Questionnaire Addressed to NHRIs Worldwide*, 8.
3. See OHCHR (note 3), 8.

instruments, and to ensure their implantation;

– To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

– To cooperate with United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights…

Almost in all establishing legislation, there is nothing preventing NHRIs from working with the UN. However, from one text to the next, the level of the explicit/official development in this regard is different. The UN newest survey shows that the founding laws of 42 respondent NHRIs (68.8%) establish mandates to interact with international and regional human rights organizations. The highest percentage is in Asia Pacific (75%), followed by Europe (61.9%), Africa (63.1%) and the Americas (55.5%).[1]

2. The Cooperation with Commission on Human Rights

After the recognition of the *Paris Principles* by the General Assembly in 1993, the issue of participation by national institutions in meetings of the Commission on Human Rights and its subsidiary bodies was the subject of several proposals and resolutions of the Commission on Human Rights and the General Assembly.

Three options were noted concerning participation by national institutions: (a) be part of the delegation of their government and be granted part of the delegation's speaking time; (b) be part of the delegation of their Government and be granted separate speaking time, in addition to that of the delegation; (c) participate in meetings in their own right with separate speaking time.[2]

At the fifty-second session of the Commission on Human Rights in 1996, the Chairman decided to introduce an interim arrangement whereby national institutions could speak from the seat of their government's delegation, but in their own right and with separate speaking time, during consideration of the item of the agenda item relating to national institutions. This arrangement was maintained at the fifty-third session of the Commission. At the fifty-fourth session of the Commission in 1998, the Chairman decided that national institutions addressing the Commission could do so from a special section of the floor, set aside

1. See OHCHR (note 3), 40.

2. Commission on Human Rights (CHR), *Effective Functioning of Human Rights Mechanisms: National Institutions for the Promotion and Protection of Human Rights – Report of the Secretary-General submitted in Accordance with Commission on Human Rights Resolution 1998/55*, para. 57.

specifically for this purpose, under the name plate "National Institutions."[1] This practice was continued in subsequent sessions of the CHR.[2] At the very last substantial meeting, the CHR in March/April 2005 took a ground-breaking step by including NHRIs in its work.[3] It decided to request the chairperson to develop modalities for permitting NHRIs that are accredited by the International Coordinating Committee of NHRIs (ICC) to speak, within their mandates, under all items of the CHR's agenda. Furthermore, dedicated seating should be allocated to the NHRIs for this purpose, and documents should be submitted under their own symbol.[4] This decision by the CHR was never implemented. In September 2005, it was decided to establish a Human Rights Council (the Council) to take the place of the CHR by the UN General Assembly Resolution. This resolution only allowed those who are fully accredited with "A" by the ICC to address the CHR.[5]

3. Cooperation with the Human Rights Council

The Council opened its first session from 19 to 30 June 2006.[6] During the 5th Session in June 2007, the Council adopted resolution 5/1 on its Institution-building, creating the first outline of the working modalities, the mechanisms and rules of procedure.[7] It held that the NHRIs could participate in work of the Universal Periodic Review mechanism[8], the Advisory Committee[9], the Complaints Procedure Mechanism[10] and Special Procedures[11].

After the adoption of the working modalities, participation of NHRIs in each session of the Council shall be afforded to those institutions which are accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) as in compliance with the *Paris Principles* ("A status" institutions); the ICC as the representative body of NHRIs globally; regional coordinating committees of NHRIs, speaking on behalf of "A status" institutions, in line with the strict criteria agreed upon by

1. See CHR (note 6), para. 58.
2. Commission on Human Rights, *Effective Functioning of Human Rights Mechanisms: National Institutions and Regional Arrangements – Enhancing the Participation of NHRIs in the Work of the CHR and its Subsidiary Bodies (Report of the Secretary-General)*, 2005, para. 7.
3. Morten Kjaerum, National Human Rights Institutions: A Partner in Implementation, in: *The First 365 Days of the United Nations Human Rights Council*, ed. Lars Muller, 2007, 145.
4. Commission on Human Rights Resolution 2005/74: *National Institution for the Promotion and Protection of Human Rights*, 2005, E/2005/23, 285-290.
5. UN General Assembly (GA), *Resolution Adopted by the GA 60/251: Human Rights Council*, A/RES/60/251, 2006.
6. UN Human Rights Council, *First Session*, http://www2.ohchr.org/english/bodies/hrcouncil/1session/.
7. UN Human Rights Council, *Report to the General Assembly on the Fifth Session of the Council*, A/HRC/5/21, 2007, 4.
8. See Human Rights Council (note 13), para. 3 (m), 31, 33.
9. See Human Rights Council (note 13), para. 66, 82, 83.
10. See Human Rights Council (note 13), para. 88.
11. See Human Rights Council (note 13), para. 42, 51.

the ICC at its 19th session in March 2007.[1] NHRIs granted "A status" by the ICC that wish to accredit representatives to the 14th session of the Human Rights Council should send a letter of request(s) by fax prior to the beginning of the session. The accreditation request should: be submitted on official letterhead; clearly state the title and the dates of the sessions the NHRI wishes to attend, be signed by the President or main representative of the NHRI.

All representatives of "A status" NHRIs, the ICC, or regional coordinating committees addressing the Council must be accredited for the Council session. Accredited representatives wishing to make an oral intervention are requested to fill out a form[2] and deliver it by hand to the List of Speakers Desk during the Council session, which will be set up in the front of the plenary room. Accredited representatives making an oral statement are responsible for bringing 250 copies of their statement, if they want it distributed in the room. Accredited NHRIs may speak on behalf of other "A status" NHRIs. In such a case, the statement should clearly indicate on whose behalf it is read. The ICC and regional coordinating committees may speak on behalf of their member NHRIs that are in full conformity with the Paris Principles, evidenced by an "A status" accreditation with the ICC. At the beginning of the statement the names of the NHRIs on whose behalf they speak must be stated. All of these NHRIs should previously have expressed their agreement with the content of the statement in writing.

When the availability of rooms permits, NHRIs accredited for each session of the Council may organize parallel events of relevance to the work of the Human Rights Council.

4. Interactions with Treaty-based Bodies

There are eight human rights treaty bodies, which are committees of independent experts that monitor the implementation of the core human rights treaties. The treaty bodies monitor the compliance with the international standards through the consideration of State parties' reports and in some cases through the consideration of individual complaints or communications.

After the adoption of the *Paris Principles*, several human rights treaty-bodies believe that the NHRIs established under these Principles can effectively promote the domestic implementations of human right treaties. Therefore some treaty-bodies strongly support these new institutions by adopting new General Comments, making concluding observations to advocate the establishment of new NHRIs or strengthening the existing NHRIs. Generally speaking, human rights treaty-bodies have made new working methods for the NHRIs to participate in their countries' reporting processes.

1. HYPERLINK "http://www2.ohchr.org/english/bodies/hrcouncil/icc_meeting.htm"
2. HYPERLINK "http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/NHRI_Statement_form.doc"

In practice, NHRIs' interactions with the UN treaty bodies were moderate.[1] They can be carried out in the following forms:

– Contributing to a State report;
– Commenting publicly on the State report;
– Submitting a parallel report;
– Contributing to the drafting of the list of issues;
– Participating in the session;
– Making a statement through the ICC Representative;
– Disseminating concluding observations;
– Conducting follow-up activities;
– Participating in the days of General Discussion;
– Contributing to the drafting of General Comments.[2]

In the treaty reporting processes, petition procedures, and follow-up procedures, each treaty body is empowered to make its own working methods. The level of NHRIs' participations in the treaty bodies' work is therefore subjected to the different working methods of each treaty body. In 2009, 69 of the countries examined by treaty bodies had an NHRI. Of those institutions, 37 participated in the treaty body process, including by submitting alternative reports or attending the sessions.[3]

4.1 Human Rights Committee

In order to ensure that it is as well informed as possible, the Committee invites national human rights institutions and non-governmental organizations to provide reports containing country-specific information on States parties whose reports are before them. Such information should be submitted in writing, preferably well in advance of the relevant session.[4]

4.2 Committee on Economic, Social and Cultural Rights

In order to ensure that the Committee is as well informed as possible, it provides opportunities for non-governmental organizations to submit relevant information to it[5]. They may do this in writing at any time prior to the consideration of a given State party's report. The Committee's pre-sessional working group is also open to the submission of information in person or in writing from any non-governmental organizations, provided that it relates to matters on the agenda of the working group. In addition, the Committee sets aside part

1. See OHCHR (note 3), 42.
2. See OHCHR (note 3), 43.
3. UN General Assembly, *National Institutions for the Promotion and Protection of Human Rights – Report of the Secretary-General*, 2010, A/HRC/13/44, para. 78.
4. Human Rights Committee, *Overview of the Working Methods of the Human Rights Committee*, VIII.
5. HYPERLINK "http://www2.ohchr.org/english/bodies/cescr/workingmethods.htm"

of the first afternoon at each of its sessions to enable representatives of non-governmental organizations to provide oral information. Such information should: (a) focus specifically on the provisions of the International Covenant on Economic, Social and Cultural Rights; (b) be of direct relevance to matters under consideration by the Committee; (c) be reliable; (d) not be abusive. The relevant meeting is open and provided with interpretation and press services, but is not covered by summary records. The Committee has requested the secretariat to ensure that any written information formally submitted by individuals or non-governmental organizations in relation to the consideration of a specific State party report is made available as soon as possible to the representative of the State concerned. The Committee therefore assumes that if any of this information is referred to during the dialogue with the State party, the latter will already be aware of the information.

4.3 Committee on the Elimination of Racial Discrimination

Accredited national human rights institutions on the one hand, and non-governmental organizations on the other hand, may provide information on issues relating to the consideration of reports of States parties, on a personal level and in informal meetings outside the Committee's working hours, to members of the Committee wishing to attend such meetings, as well as respond to requests to clarify or supplement such information.

The secretariat will inform accredited national human rights institutions and non-governmental organizations about the Committee's program of work for the respective session and will provide them with copies of the reports due to be considered by the Committee.

The Committee may organize, when it deems appropriate, informal meetings with representatives of accredited national human rights institutions, on the one hand, and non-governmental organizations, on the other hand, on issues of major importance for the implementation of the Convention. The Committee will determine the agenda and the modalities of such meetings. States parties will be invited to attend.[1]

4.4 Committee on the Elimination of Discrimination against Women

The recognition of the work of NHRIs by the Committee was gradually reached. In the 2007 Overview of the Working Methods of the Committee, it was explained that the Committee set aside time for representatives of national human rights institutions to present information to the Committee at a recent session. The Committee is interested in establishing further interaction with such institutions and will continue to develop modalities for such interaction.[2]

1. Committee on the Elimination of Racial Discrimination, *Committee on the Elimination of Racial Discrimination – Working Methods B*.

2. Committee on the Elimination of Discrimination against Women, *Ways and Means of Expediting the Work of Committee on the Elimination of Discrimination against Women – Overview of the Working Methods of the Committee on the Elimination of Discrimination against Women*, para. 36.

In 2008, the Committee made a clearer explanation on its relationship with NHRIs: The Committee recognizes that national human rights institutions may contribute in various ways to the work of the Committee under the monitoring procedures of the Convention and its Optional Protocol. National human rights institutions may provide comments and suggestions on a State party's reports in any way they see fit. National human rights institutions may also provide assistance to alleged victims of human rights violations under the Convention to submit individual communications to the Committee or, when the situation arises, provide reliable information in relation to the mandate of the Committee to conduct an inquiry. The Committee further welcomes the provision by national human rights institutions of country-specific information on States parties' reports that are before the pre-session working group or the Committee. Such information may be submitted in writing prior to or at the relevant pre-session working group meeting or the relevant session of the Committee. National human rights institutions may also physically attend and provide information orally in the meetings allocated to them in the pre-session working groups and sessions of the Committee. The Committee will include such a time allocation for national human rights institutions' contribution in the provisional agenda of the relevant working group meeting or session in order to enhance the visibility of input from national human rights institutions.[1]

4.5 Committee against Torture

Committee against Torture (CAT) believes that NHRIs are bridges between the national and international protection mechanisms and treaty bodies. The Committee attaches great importance to the inclusion in the State reports of information related to the de facto implementation of the Convention as well as factors and difficulties affecting such implementation. It therefore receives information from and allows the NHRIs to participate in the reporting process and to address the CAT separately from the State party's delegation and NGOs.[2] NHRIs may engage with the CAT in several ways.

Written information for the List of Issues (LOIs):

The NGOs and NHRIs may submit written information to the CAT relevant to the LOIs. That information must be received by the Secretariat no later than 2 months before the session. Once adopted by the CAT, the LOIs are sent to the State parties. The State parties' replies to the LOIs are also posted on the website.[3]

Written information for the consideration of the State party's report:

NHRIs and NGOs may also submit written information for the consideration of a State

1. Committee on the Elimination of Discrimination against Women, *Statement by the Committee on the Elimination of Discrimination against Women on its Relationship with National Human Rights Institutions*, 2008, E/CN.6/2008/CRP.1, paras. 6-7.

2. Committee against Torture (CAT), *Participation of non-governmental organization and National Human Rights Institutions in the Reporting Process to the Committee against Torture – Participation of NGOs and NHROs,* 2010.

3. See CAT (note 28).

party's report.[1]

In-session briefings before the consideration of the State party's report:

NHRIs and NGOs that have submitted written information to the CAT may also meet with the Committee. These briefings take place one day prior to the dialogue with the State party's delegation in private. This brief is for one hour. The representatives of NHRIs have approximately 30 minutes to address the CAT. The members of the CAT pose questions in the remaining time. In course of this brief, NHRIs should only highlight and update its most important issues. NHRI that have submitted written information and wish to brief the CAT but are unable to come to Geneva to attend the session may contact the Geneva Representative of the International Coordinating Committee (ICC) of NHRIs. The ICC Representative is available to represent "A status" NHRI before the CAT.[2]

Written information for the follow-up to the Committee's recommendation:

NHRIs may also submit written information to the CAT under its follow-up procedure on the implementation of these recommendations by the State party. They should specifically identify a number of concerns and recommendations in the concluding observations that are serious, protective and can be achieved within one year.[3]

4.6 Committee on the Rights of the Child

The pre-sessional working group of the Committee convenes a private meeting with UN agencies and bodies, NGOs, and other competent bodies such as National Human Rights Institutions and youth organizations, which have submitted additional information to the Committee prior to its consideration of a State report. The end result of the pre-sessional working group's discussion on a State report is a "list of issues." The list of issues is intended to give the Government a preliminary indication of the issues which the Committee considers to be priorities for discussion.[4]

The Committee has systematically and strongly encouraged NGOs and NHRIs to submit reports, documentation or other information in order to provide it with a comprehensive picture and expertise as to how the Convention is being implemented in a particular country. The Committee welcomes written information from international, regional, national and local organizations. Information may be submitted by individual NGOs or national coalitions or committees of NGOs.

At its twenty-second session the Committee adopted its "Guidelines for the participation of partners (NGOs and individual experts) in the pre-sessional working group of the

1. See CAT (note 28).
2. See CAT (note 28).
3. See CAT (note 28).
4. Committee on the Rights of the Child (CRC), *Overview of the Working Methods of the Committee on the Rights of the Child*, II.A.

Committee on the Rights of the Child."[1] NGOs, NHRIs and other competent bodies may request a private meeting with the Committee.[2]

4.7 The Committee on the Rights of All Migrant Workers and Members of Their Families (CMW)

The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) is the body of[3] independent experts that monitors implementation of the[4] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by its State parties. It held its first session in March 2004.

In accordance with article 74, paragraph 4, of the Convention, the CMW may invite specialized agencies and organs of the United Nations, as well as intergovernmental organizations and other concerned bodies, to submit, for consideration by the Committee, written information on such matters dealt with in the Convention as fall within the scope of their activities. In the text of Convention itself, it does not make it clear which institutions are qualified as "other concerned bodies." Nevertheless, in its first session of the CMW, the Committee further interpreted that "other concerned bodies" included NHRIs, NGOs and other bodies.[5] In its second session, while dealing with Working Methods in Relation to the Consideration of Report, the Committee agreed that it would in principle follow the practices established by other treaty bodies in the consideration of States parties' reports.[6] The Committee further agreed that it would invite contributions from United Nations agencies, intergovernmental organizations, non-governmental organizations, national human rights institutions and other concerned bodies in preparation for the consideration of the report. For this reason, the Committee would also ensure that States parties' reports, the lists of issues and States parties' responses to the lists of issues were publicly available.[7]

4.8 The Committee on the Rights of Persons with Disabilities (CRPD)

The Committee on the Rights of Persons with Disabilities (CRPD) is the body of independent experts which monitors implementation of the Convention the Rights of Persons with Disabilities by the States Parties. Its first session was conducted in Feb. 2009.[8] The

1. United Nations, CRC/C/90, Annex VIII.
2. See CRC (note 33), VIII.
3. HYPERLINK "http://www2.ohchr.org/english/bodies/cmw/members.htm"
4. HYPERLINK "http://www2.ohchr.org/english/law/index.htm"
5. See United Nations, *Report of the CMW – Annex IV: Provisional Rules of Procedure of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families*, A/59/48, 2004, Rule 28. The number of this Rule was changed to "Rule 29" in the Second Session of the CMW (2005). The content remains the same with the original wording. See United Nations, *Report of the CMW – Annex VI: Provisional Rules of Procedure as Amended*, A/60/48, 2005, Rule 29.
6. United Nations, *Report of the CMW – I. D. Methods of Work*, A/60/48, 2005, para. 14.
7. See UN (note 39), para. 15.
8. Committee on the Rights of Persons with Disabilities, *Provisional Agenda and Annotations – Note by the Secretary-General*, CRPD/C/1/1, 2009, 1.

Rules of Procedure and Methods of Work of the CRPD are still under development. A close inclusion of NHRIs in the work of the Committee is expected.

5. Evaluation

The interaction between NHRIs and the international human rights system is growing. In his latest report to the Human Rights Council regarding NHRIs, the Secretary-General encourages NHRIs to continue to interact and cooperate with the United Nations human rights system and to advocate for the ratification and effective implementation of international human rights instruments. Since several new international human rights instruments, such as the Optional Protocol to the Convention against Torture and the Convention on the Rights of Persons with Disabilities, give NHRIs a potential monitoring and implementation role, the Secretary-General encourages States parties to strengthen the mandate and capacity of NHRIs to enable them to fulfill this role effectively.

The different procedures in each individual treaty body make it more difficult and demanding for NHRIs to communicate and participate. They provide insufficient and different access of NHRIs to each of the treaty bodies. Furthermore, mechanisms for follow-up on the recommendations made by the treaty bodies are different for each body and not systematic.[1]

While relations between the UN and NHRIs have been significantly strengthened, the legal nature of the NHRIs' relations with the UN human rights mechanism is not as clear as that of the NGOs. But this does not prevent NHRIs from creating new international rules through their practices. For the benefits of promoting and protecting human rights, NHRIs' creation of new practice should be encouraged as a positive development. Furthermore, and maybe more importantly, through individual and collective participation in the UN charter-based and treaty-based mechanisms, NHRIs help bring human rights norms home in a constructive and participatory manner. As Prof. Morten Kjaerum has pointed out, the strong presence of all parties in Geneva may help create a higher level of understanding among all actors on views and backgrounds for certain positions. NHRIs bring to the debate a highly professional view from the national level, which may query and add nuances to State positions and in some cases also help explain and create understandings for particular views.[2]

Against this developing process, there is also a great need to rethink whether it is necessary for the NHRIs to participate in the UN mechanisms. In a training course on NHRIs at Shantou University[3], Prof. Gudmundur Alfredsson argued that the participation of

1. International Coordinating Committee of NHRIs (ICC), *Discussion Paper on NHRIs in the UN Reform Process*, 2006, 6.

2. See Kjaerum (note 9), 150.

3. This training course is a part of the research project on the Establishment of NHRIs in China. This project was introduced by Prof. Gudmundur Alfredsson (a former Director of the Raoul Wallenberg Institute of Human Rights and

NHRIs in the UN work should not be encouraged. Due to the limited resources, the NHRIs should spend more time and financial resources at home instead of travelling a long way to UN headquarters for various meetings. This does not prevent the NHRIs from participating in UN's meetings or conferences. The NHRIs will frequently come under pressure to praise their governments in these meetings rather than to confront their governments with questions or criticism which the NHRIs should best do at home. When the NHRIs praise their governments without good reason as they sometimes do, they behave like government ministries and as not independent institutions. This may contradict their responsibilities required by the *Paris Principles*. When the NHRIs criticize the performance of governments before international bodies and other governments, the home governments may punish those NHRIs either by reducing their budgets or appointing/electing new members of the NHRIs who are less critical to the government abroad. Eventually, the NHRIs may thus suffer from the reaction of their governments even before fully carrying out the domestic protection and promotion of human rights.

As Prof. Brian Burdekin observed in the same training course, NHRIs provide valuable information to the UN mechanisms. Tensions between the NHRIs and governments constantly exist, but it is important for the NHRIs to balance their "advisory" and "adversarial" functions when dealing with the governments.[1]

A NHRI works at the national level and its international role is only a complement to its major role which is contributing to domestic implementation. The focus is on how to implement the UN human rights treaties at home; the national role of NHRIs is more important than any accomplishments they can make in the international arena. At the same time, NHRI shall continue to make sure that the critics from UN treaty bodies are in fact reviewed by the relevant government.

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Humanitarian Law) to Prof. Xianming Xu (a former President of China University of Political Science and Law) during a discussion on how to better implement international human rights treaties on the domestic level in early 2003. In Oct. 2004, the first of its kind international conference in China was held in the city of Tsingdao with the help of Prof. Brian Burdekin. Since then, a group of experts has been working in this field with a funding from the Swedish International Development Agency. Series of commissioned studies, conferences and trainings have been carried out. In the summer of 2009 and 2010, the author also organized 2 Summer Courses on Human Rights Law for around 200 university students from all over China with a diverse participation of professors from Australia, China, France, Germany, Holland, Iceland, Italy, Spain, Sweden, Tanzania, and the United States. The author has been responsible for the planning, coordination, facilitation of this project.

1. Brian Burdekin, *National Human Rights Institutions in Asia-Pacific Region*, 2007, 63.

Interplay between Multilateral Governance and Local Practice on Human Rights: A Case Study of Taiwan

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I. Introduction

Human rights mean the fundamental rights naturally enjoyed by a person after he or she is born. Human rights are applicable for every one born as a person and shall not vary against different background or in different regions (Fo-Chuan Chang, 1993: 4). However, due to the firmed idea of supremacy of national sovereignty before World War II, it was very difficult for the international community to intervene into human rights affairs, which were considered as the domestic affairs. The international community adopted compromise policy towards the practices of aggression and infringing human rights of ambitious countries, indirectly leading to the outbreak of World War II. Nazi Germany and Japanese warlords committed extremely cruel enormity to European and Asia-Pacific countries and peoples during the war time. Hence, after the war, all the leaders of major countries stressed the importance of maintaining the world peace and protecting human rights (Newman and Weissbrodt, 1996: 5). In other words, after the World War II, the concept of human rights maintained the trend of legalization and internationalization and was gradually recognized universally by various countries (Chih-Chieh Chou, 2001: 15). After the United Nations was established in 1945, a series of international treaties on human rights and other related documents were formulated to affirm the existing human rights in the form of law. Thanks to a series of important international laws and regulations on human rights such as the Charter of the United Nations, Universal Declaration of Human Rights, and International Covenant on Economic, Social and Cultural Rights (ICESCR), human rights were escalated from an abstract concept into a concrete legislation request. After related covenants of the United Nations were adopted and came into effect, human rights have become the important reference and basis for various countries to implement and formulate human rights policies. The international human rights regime (IHRR), consisting of international human rights instruments and laws, treaty supervising bodies, UN and relevant IGOs and international and local NGOs, has taken shape. Through signing and ratifying these covenants, various countries domesticalized them, providing substantive domestic legal protection for human rights protection and practices (Chih-Chieh Chou, 2006: 212). For this reason, human rights

have become one of the goals of global governance.

In fact, from the perspective of constructivism in global governance and international relationship, we can find that international norms and systems have significant impacts upon the activities of a sovereign state. Human rights topic is not excluded because a country is among the social network formed by various interplay of different countries. Such network shaped the international outlook of a sovereignty state and its position and role in the international community (Finnermore 1996: 2). Thus, human rights development after 1945 fundamentally reshaped the notion of national sovereignty, giving birth to the concept of humanitarian intervention in the international community. Though national sovereignty is still the basic principle of international laws (that means consent of a country is needed), an increasing number of countries are creating more international regimes through consents of national sovereignty to restrain the operation of national sovereignty coming with it. With the expansion of international human rights concept, a state will also gradually allow many different international systems to share the jurisprudence related to human rights topics. The world has formed the attempt of the international community indirectly protecting human rights.

On the contrary, realists always suspect the restraining force of international norms and regime on a country, and believe that a country substantively lacks of the strong motives of cooperation on human rights with other countries. Meanwhile, international and domestic human rights groups and organizations do have the capacity of forcing a country into compliance (Naylor, 1998; Pape, 1997; Morgan and Schwebach, 1997: 27-50). According to traditional realism, a country's concession to international norms of human rights is an approach for the country to gain short-term profits and improve its international legitimacy. On that occasion, the country can only rely on soft sanction measures and legal obligations most of which cannot be implemented. Realist is convinced that various countries sign and ratify human rights laws and regulations on the purpose of improving their international legitimacy and authority of speech, and avoiding any multilateral sanction caused by continuous human rights infringements. For instance, Stephen Krasner analyzed the relative rights and interests of a country with hegemonic stability theory, which can fully explain the differences in the achievements of human rights protection. He noted that given the British Empire had the exclusive advantages on the sea, the salve trade would not have been abolished in the 19th century; during the period from late 19th century to early 20th century, the protection of minority ethnic groups in Central Europe failed on the verge of victory. The reason is that then powerful states did not want to implement the laws and regulations they formulated (Krasner 1993: 143, 166). Thus, for a realist, the prior motive for a country to take action in the international community is to maintain or improve its political influences to other countries on the international political stage, no matter the actions are taken in

unilateral or multilateral forms, or by means of alliance, consultation, governance, armed conflicts or wars.

As such, to establish the mechanism of global governance on human rights, we should construct global and regional IHRR. More importantly, the international community and other transnational actors should gradually socialize the actions of a state so as to make it under the restraint of international norms through exerting political, economic and social pressures, philosophies and discussion, and carrying forward and standardizing the domesticalization process. However, the process also involves the interplay between the subjectivity of national sovereignty and normality of international norms in the international system. In other words, it is a coordination process between multilateral norms of human rights and their philosophical values and local sovereignty and cultural traditions. Some people even expanded the above-mentioned topic from the coordination between human rights and sovereignty to the argument between universalism of human rights and relativism.

In this article, I will discuss the influences of the development of international human rights norms and regimes after World War II upon the Chinese societies through mainly analyzing the human rights practices in Taiwan based on the historically process-tracing approach, and the responses of the non-western societies to the conflict or compatibility between international human rights norms and local and traditional cultures. Thus, in the article, I will discuss the following topics in order: the article first talks about (1) the core concept and value of human rights; then (2) reviews of the evolution of the multilateral human rights governance mechanisms constructed by international human rights laws and regulations led by the United Nations; after that, the article (3) analyzes the interplay between national sovereignty and international human rights from the angle of international relations and international laws; then, the article (4) inspects the arguments of the international human rights academician circles and practice circles on human rights relativism and universalism and putting forward the solution of constructing local human rights regulations and regimes in regional level. The above-mentioned review and inspection influence the channels and motives of Chinese societies in the process of abiding by international laws and regulations on human rights; (5) human rights protection in Taiwan is almost complete in terms of forms and laws and regulations; however, in practice, there still exist the soil of political mobility influencing civil culture, the expectation of economic growth overtopping sustainable development and the rich-poor gap deepening the differences between the urban and rural areas and between the south and the north; the article continues to discuss (6) how Chinese Mainland should link up the neo-Confucianism with human rights value to resist the core value of local culture of the pressure from the universalizing human rights norms, and actively construct the human rights value with Confucian characteristics. Finally, the article take Chinese Mainland as an example discusses the difficulties and opportunities in human

rights of the Chinese societies including Taiwan. In the attempt of constructing localized human rights discourse, the Chinese societies across the Taiwan Straits have accumulated enough confidence to realize that the western human rights concepts and Chinese traditional culture can not only co-exist, but also support each other. Experience from Taiwan also shows that we can join the human rights values of the two Chinese societies through across-the-straits exchanges and dialogues. In the predictable future, both Chinese societies can establish their common Chinese discourse of human rights so as to make joint efforts in interpreting the human rights values and practices of the Chinese societies in the international communities.

II. Legalization and Internationalization of Human Rights Concepts

2.1. The Basic Connotation of Human Rights

Human rights are also known as fundamental rights, extensively referring to all the individual rights such as right to be equally treated, right to freedom, right to participate in political affairs and social right. Fo-Chuan Chang (1993: 128) pointed out that "rights originate from people's intellect and consciousness." When people began to realize that a person is a subject and other people are also subjects, they knew that they should have consensus on their individual positions. This is the beginning of the awareness of rights. At the same time, we should also stress that human rights should be enjoyed by everyone, as well as the fundamental rights naturally enjoyed by everyone as a person. No one can give away his or her human rights to other people or deprive or infringe other people's human rights. Mab Huang (2004: 12) also believes that human rights are the fundamental rights for every one of us after we were born and promoting and protecting human rights are becoming the universal values gradually. Ann Kent (1993: 6-9) insists that human rights are the fundamental rights for individuals from the society based on the equality concept, as well as natural rights that cannot be deprived or transferred by all the people. Jack Donnelly (1991: 16-17) notes that human rights originate from humanity and people's morality. For individuals, human rights are not for survival, but for dignified life. Thus, treading and infringing human rights mean negation of humanity. Ching-Hsiung Hsu (1996: 12-14), from the angle of constitutionality, stresses that human rights are the rights naturally owned by people universally, and the fundamental rights for individuals to resist against oppression from the state or the society and maintain dignity and personal independence. Basically, human rights mean the rights for humans. Since human rights are the fundamental rights for human beings, all the people with personality should enjoy the rights, regardless of his or her background, race, region, environment and time (Dembour, 2010: 7-8; Zhang Guosheng, 2003: 3-4). The necessity of human rights is directly based on personality and personal dignity together with any natural person as an undividable whole. Human rights are the basis

of personal dignity, aiming to enable every one to play his or her potential and talents, and realize his or her personal goals.

2.2 Development of Multilateral Human Rights Governance: Process of Human Rights Legalization and Internationalization

Upon establishment in 1945, the United Nations began to formulate a series of international human rights treaties and instruments, affirming the existing human rights in legal forms. First, it adopted the Charter of the United Nations to establish new order of international laws. The charter includes new human rights principle and self-determination principle, recognizes that every people enjoys fundamental human rights and freedom and indicates the development trend of UN-led international human rights legalization. In its preamble, the Charter notes, "We, the people of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small…" Article 1 of the Charter pointed out that, "promoting and encouraging respect for human rights and for fundamental freedoms for all" is one of the principle of the United Nations (Yung-Ran Lee, 2008: 190); article 55 stipulates that the United Nations shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." This indicates that human rights have universal value and should be promoted to be popularized. This is the most basic demonstration of the United Nations on human rights protection, as well as the basis of promoting human rights aftermath. The follow-up Universal Declaration of Human Rights can be regarded as the concrete practice of the article (Ming-Juinn Li, Wu Tien Mei Chi Tzu, 2004: 107); article 56 stipulates that "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55," which clearly points out the legal obligation of UN member states of respecting and abiding by human rights and fundamental freedom. These articles indicate that protecting human rights and maintaining the world peace and security are equally important and cannot be separated from each other. They are the important basis of the norms of modern international human rights laws (Yung-Sheng Lin, 2009: 217-218).

In order to expand and specify the Charter of the United Nations, the UN Commission on Human Rights successively formulated and adopted Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR) and ICESCR based on the Charter. The above-mentioned three documents are known as International Bill of Human Rights, serving as the most fundamental and most important international norms of human rights. They have extensive and detailed stipulation on the fundamental human rights for every people, explain in detail the human rights related clauses of the Charter of

the United Nations and cover the obligations and responsibilities of most UN members on human rights protection. After several decades' development, they are now the parent laws of the current international human rights norms. Most international covenants related to human rights are based on the three documents (Chih-Chieh Chou, 2006: 209-220). Now, I will briefly introduce the three documents:

(I) Universal Declaration of Human Rights

Universal Declaration of Human Rights was adopted by the UN General Assembly on December 10, 1948, a document that explains what are human rights and fundamental freedom. Besides interpreting the Charter of the United Nations, it is also the first document to systematically stipulate human rights in detail, and has made principle declaration on the non-deprivable and inviolable fundamental rights of people. In its preamble, it declares that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;" article 2 reads, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." These stipulations have greatly promoted the universal concept of human rights (Chih-Chieh Chou, 2006: 219). As the common standards for all the peoples and countries, Universal Declaration of Human Rights requires promoting respect and realization of various rights and freedoms in an all-round way. The human rights listed in the document not only include western traditional civil rights and political rights, but also cover the concepts of economic, social and cultural rights.

Universal Declaration of Human Rights expands the human rights concept; meanwhile, it covers many rights that go beyond the constitutional and legal protection on human rights in western countries. On the one hand, it inherits and carries forward the philosophic basis of individualism and liberalism in Europe and the United States and stresses freedoms of religion and speech and the right to participate in political affairs; on the other hand, it introduces the care of socialism to different groups, such as the right to be educated and work (Mab Huang, 2002: 70-71). Thus, the declaration is honored as the "Charter for all human being" (Chih-Chieh Chou, 2006: 209) and the foundation stone of the popularization of human rights concepts in the past more than 60 years after the World War II. Its significance is that it can gradually promote legalization of human rights through efforts of the United Nations and various countries; meanwhile, it can also help human rights legalization be the consensus of the international community. These are also the standards and norms practiced and followed by various sovereignty countries (Ching-Yi Liu, 2008: 224; Mab Huang, 2008: 186).

(II) ICCPR and ICESCR

Though important, Universal Declaration of Human Rights, which is only a resolution instead of a covenant, is not legally binding for its member states. On December 16, 1966, the United Nations adopted two covenants: ICCPR and ICESCR with epoch-making significance because of their stipulation of international obligation of protecting human rights. In its preamble, ICCPR states that the States Parties to the present Covenant consider "the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms." The former, also known as the covenant on the right of freedom, is regarded as the first-generation human rights, which stress individual rights; the latter is also called covenant of social rights, which are considered as the second-generation human rights, focusing on collective rights (Yung-Ran Lee, 2010: 12-22; Hsin-Yen Yang, Chin-Chi Chen, 1998: 9). The two covenants are the most important among all human rights covenants led by the United Nations.

Universal Declaration of Human Rights demonstrates the concepts and categories on human rights protection; ICCPR and ICESCR standardize the importance of right to freedom and social rights and the protection scope respectively. In this sense, international bills of rights are the most fundamental international concepts and requirements of human rights, as well as the human rights benchmark the United Nations expects various states to reach (Yung-Ran Lee, 2010: 12-22; Lung-Chu Chen, Fu-Te Liao, 2001: 36). After that, the United Nations adopted the covenants and documents related to human rights protection of various kinds such as Covenant on the Elimination all Forms of Discrimination against Women, Covenant on the Rights of the Child and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These follow-up documents are regarded as the international core treaties on human rights and the parts and parcel of international human rights laws and regulations (Chou, 2009: 127-128).

Starkey (1997: 17) pointed out that laws and education are the important foundation stone to ensure the fundamental freedom of the people. The core value of human rights is respecting humanity dignity, while human rights protection and maintenance need concrete legal documents to be implemented. Protection of human rights depends on legislation, implementation, and coordination between people and government. It ensures the practice of human rights through legal channels. In the era of globalization, the forces from international organizations are also needed to promote human rights indicators through formulating related international covenants (Green, 2001: 1067). Hence, Universal Declaration of Human Rights and other international covenants are not only the common goals of practices for the world community, but also occasionally the basis for various countries to formulate and modify human rights clauses in the constitutions and various rights-related laws.

Except for the efforts of internationalization and legalization, since 1978, the United

Nations has been encouraging various countries to constitutionalize and legalize the establishment national human rights institutes to further standardize the domesticalization of international human rights norms. In 1993, the Paris Principles was adopted to ensure the independence and effectiveness of national human rights committees. According to the Principles, the members of national human rights committees should include people from different circles and the committees should be operated independently so as to ensure the government laws can follow the international human rights norms. Besides providing the government with related human rights protection plans, the committees should also play the important role of promoting investigation on human rights cases, release of human rights reports and popularization of human rights education so as to supervise and promote the implementation of domestic human rights (Feng-Jeng Lin, Chun-Yen Lin, 2002: 153-154; Fu-Te Liao, 2007: 215-216). Actually, national human rights institutions have the functions of assisting governance in human rights field, promoting political détente and establish law-based governance of human rights quality (Chih-Chieh Chou, 2009a: 19-20; Yung-Ran Lee, 2010: 27). So far, more than 100 countries and regions have established national human rights institutions such as the western countries like the UK, Germany, France, Canada, Australia and emerging democratic countries like Republic of Korea, South Africa and Mexico. They also established a global forum on national human rights institutions – Asia-Pacific Forum in 1996. The forum has become the most influential NGO with government background in the world human rights organizations.

The UN Paris Principles stresses that the quasi-judicial function of national human rights institutions is to complement related constitutional departments, instead of replacing them, and should be operated within the existing constitutional system in various countries. For instance, the rights of inquiring information, investigation and transferring should be operated under the principle of not intervening into the powers of other departments. However, practices and experience from other countries show that other constitutional departments such as administration, legislation and judicature still suspect the functions and rights of national human rights institutions and directly or indirectly resist or palter with the institutions while these institutions request assistances in exercising their functions (Chih-Chieh Chou, 2008: 26). In fact, the key for the problem is to coordinate its relations with other departments. The problems in realpolitik level cannot be solved by Paris Principles or improvement of other related laws and regulations.

Based on the above-mentioned analysis, the current development trends of human rights can be divided into three stages that can be overlapped with each other: (1) internationalization of domestic-oriented human rights affairs; (2) legalization of human rights values and norms; (3) domesticalization of international human rights norms (Chih-Chieh Chou, 2007: 15; 2009b: 24).

III. Compatibility between Human Rights and National Sovereignty: Normality of Multilateral Norms vs. Subjectivity of Sovereign States

The adoption of the Charter of the United Nations in 1945 and Universal Declaration on Human Rights in 1948 has changed a person's political position in the international politics. The state is no longer the only awarder of individual rights. Members of the United Nations agree unanimously that individuals are not cared in the status of group members (minority or special ethnic groups), but protected in the status of human race (Cassese, 1990: 289). However, human rights norms not only involve in the prohibition of violence, but also cover the responsibilities of the states. Human rights norms are the fundamental regulations that must be established in the process when people hope to possess dignity and seek various goals in a peaceful environment in the complicate, rapid-changing and high interdependent society (Freeman 1996: 358). Hence, the United Nations, since establishment, has been attaching great importance to the internationalization and legalization of human rights value, promoting the formation of international human rights regime. According to the definition given by Donnelly (1982: 210), regime is the product of political forces to cope with improper standardization and treatment of the state. Donnelly (1982: 210-211) further expanded the opinions of Keohane and Krasner, believing that the emergence of international human rights regime originated from the increase of the moral demands in the international community; meanwhile, the main countries also would like to provide international systems to keep the acts of states that go counter against human dignity at bay. The goal of constructing the regimes is to formalize international affairs related to human rights and standardize acts of states.

Besides the global human rights regime led by the United Nations, several regional organizations also lend support the construction of regional human rights regimes. Some international NGOs are committed to the initiation and legalization of specific human rights programs. These efforts can be divided into two groups of initiatives-based and implementation-based attempts. The former is devoted to the universalization and international legalization of human rights norms while the latter stresses the effectiveness of the norms and practices of states (McAdam and Rucht, 1993: 56-76; Chou, 2008). As Donnelly mentioned, compared with the time after 1945, there is almost not any international human rights regime before 1945. It is the most surprising development that most international human rights regimes can gradually strengthen themselves in the past 30 years (Donnelly 1989: 153). Thus, the regimes of global and regional human rights norms have exerted substantive influence upon the legal system and diplomatic practices of sovereignty states. Human rights are no longer in the jurisdiction inside a state, but one of the topics related to international relations. Many human rights concepts have become international norms and world-recognized rights also have the trend of being legalized and domesticalized.

Entering the 21st century, accumulation of various human rights has clearly become the goal protected by international laws.

As mentioned above, after the end of the Cold War, various parties predicted that human rights would be the fundamental constitutive requirements of national sovereignty. Though the 9/11 attack is the challenge of the assumption, we still believe that it is reasonable to be optimistic at the strengthening international human rights norms after observing the development of international laws. International human rights jurist Bassiouni believed that traditional sovereignty-based opinions did not recognize the multilateral protection of human rights of the international community, a practice that is invalid nowadays. Currently, many treaties have been applied; many countries use international customary laws; and the general principles of international laws also exert binding forces on the state (international laws consist of agreements, consuetude, domestic laws and compulsory laws) (Bassiouni, 1993: 238). Thus, international laws have diversified legal procedures to prosecute human rights infringers. Cassese also insisted that according to the existing international regimes of human rights protection, the norm beneficiaries can actively request protection of his or her rights; compared with other international institutions that supervise international laws to ensure it should be followed, the existing regimes also made satisfactory achievements. We do not need to be frustrated because of the small number of international supervision organizations (Cassese, 1986: 102-103). In addition, legal rights can be established on the basis of international customary laws. Whether or not a country is a party of human rights treaties, it must perform its obligation of protecting international human rights. International customs can support the following arguments: since all the UN members accept the standardization on the obligation of human rights stipulated in article 55(c) and article 56 of the Charter of the United Nations, the follow-up human rights treaties only need to further explain these obligations (Byers, 1999: 43-44).

However, the conflicts between human rights and sovereignty emerged. The conflicts are often used to assess the roles and definition of powers in the procedures of international customary laws. Byers noted that a state should intervene into all the affairs happened within its territory through exercising powers; while international community uses customary rules to challenge the exclusive powers of the state. This is the dispute on exclusion (Byers, 1999: 45). However, the divergence and argument mainly among scholars of international laws and international relations tend to hamper multidisciplinary researches (Toope, 2009: 91). After Hans Morgenthau described the divergence in mid-1940s, an increasing number of scholars of international relations suspect the effectiveness of international human rights laws. Morgenthau believed that the order of international laws is fragile in the international system in anarchy, and international statute laws tend to be controlled by power (Morgenthau, 1978: 279-288; Hurrell, 2000: 328). Especially for realists, owing to its decentralization essence,

international laws may become an inefficient mechanism when human rights conflict with sovereignty in international relations.

Though above-mentioned opinion devaluated the influence of international norms upon the acts of states, international legal system is not a standardization mechanism that is simply regarded to be lacking of compulsory measures. It is actually the mechanism of formation of legal relations (Allott, 2000: 74). When realists observe the effectiveness of powers in researching international laws, they usually neglect the fact that international norms can also form power relations. Viewing from the angle constructivism of international relations and scholars of international laws, we can see that legal rules and relations are both important, because they constitute the game rules of power and politics. But its great contribution is that it stabilizes and legalizes the power of particular actors (Hurrell, 2000: 330). Hurrell's criticism directly challenges the realism principles. He continued:

While analyzing powers, neo-realists make incorrect assessments to the importance of norms and laws. They mistakenly regard norms, regulations, systems and values as the reflection of material strength. Power is still the analysis focus of international relations. However, power is a kind of social attribute and we should put it together with other typical social concepts (such as reputation, authority, validity and justice) to better understand power. This is indeed a great contradiction, because realists neglect the social facets and they cannot completely and convincingly explain the core argument that they look up to as a standard (ibid).

Thus, analysis on the development of international human rights norms should explain the role of international human rights regime in forming the country-to-country power relations. After World War II, the international human rights develop amid the struggles and competition among sovereignty states, international organizations and particular political activities and every development stage involves power, interests and political wills. The Cold War is a good example when human rights were occasionally manipulated as a tool by powerful states like the United States and former Soviet Union. The subjective wills and implementation forces of powerful states put the order constructed by international human rights regimes into heavy pressure (Chih-Chieh Chou, 2005). These states had the power to determine the consultation process of international laws and international regimes and maintain their own national interests with compulsory forces.

However, though human rights are vulnerable to the influence of cycle manipulation of power and interests, it does not mean that international human rights have lost its important position. International human rights laws have become the major legal bases for a country to deal with human rights affairs, and those who are persecuted can use the laws to resist persecutors. Human rights mechanisms can reduce the scope for a country to legally utilize its compulsory forces by means of restricting the operation of some compulsory forces (Chih-

Chieh Chou, 2006). Thus, powerful states can also be restrained by the norms established by international human rights regimes to some extent (Frost 1996: 105). Under the current international atmosphere, a state should abide by and respect these obligations, at least in a perfunctory manner, and should put forward proper reason when it wants to object some obligations according to the above-mentioned norms.

For this reason, to analyze the coordination between multilateral human rights norms and local human rights practices, we do not mean to focus on the emerge or the end of multilateral human rights governance era, but to analyze whether or not global human rights norms can directly or indirectly form the validity of acts of states, and through what measures can this be achieved (Chou, 2009). In other words, the key is, whether or not international human rights regimes can promote human rights protection, and how can they influence a sovereignty state through legalization and domesticalization. The arguments between human rights and sovereignty always influence the development of human rights norms, but will not lead to disintegration of human rights regimes. On regional layer, human rights norms are even more active, showcasing the characteristics of region-based local cultures.

IV. Dilemmas in Human Rights Localization and Domesticalization: Relativism and Universalism

Though human rights have become the universal value and have been promoted from a concept to be the substantive rights through legalization efforts, they are facing the challenges brought by the differences in the eastern and western cultural values. According to the declaration adopted at the World Conference of Human Rights held in Vienna in 1993, "All human rights are universal, indivisible and interdependent and interrelated" (Albuquerque, 2010: 145). It seems that human rights universalization has win the world recognition. However, the declaration also notes that "the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind," revealing the human rights arguments implied in cultural differences (Wu Tien Mei Chi Tzu, 2006: 281-282). Most developing countries suspect the objectiveness of the so-called universal human rights. Based on the different values derived from the national, ethnic and cultural differences, human rights protection and practices should consider the realities in different regions. While assessing human rights issue, we should take into consideration diversified backgrounds such as national situations, regions, cultures and beliefs (Weiss et al., 2009: 129-152). Usually, when a research on the human rights that does not mention particular regions, it usually means the values that are originated from the west and are gradually universalized. The reason is that the development of human rights philosophy and concepts started from the Enlightenment in the Europe, which equalizes

human rights values to the western value; with the modernization and colonization, the value experienced a one-way flow from the west to the rest of the world. After the World War II, many countries in Asia, Africa and Latin America were committed to modernization. Some countries with remarkable economic development, especially those emerging industrial countries and development-based countries, found it difficult to accept the hegemony of the western countries in interpreting human rights concepts.

International human rights norms encounter conflicts in non-western civilizations in the process of localization, leading to the dichotomic confrontation between the western universalism relativism in non-western areas (Shih, 2002). The former believes in the goal of promoting human rights value, insisting that human rights should be superior to cultural difference and serve as the universal value recognition. For this reason, cultural traditions of other civilizations should follow the international human rights norms centered with western values; however, relativists insist that the international human rights norms from western philosophic traditions cannot reflect the universal values and only consist of the values and concepts of western countries like Europe and the United States. Owing to the obvious differences in traditions and cultures between the east and the west, the universal human rights insisted by western countries mean to force the western mainstream values into eastern traditional cultures. It is not the genuine "universal" human rights unless the international human rights norms can include the main norms of Asia value (Chou, 2008: 142-144).

Donnelly believed that modern western countries and non-western countries hold great different views on human rights for individuals. Western countries' traditional value is to protect individual rights, insisting that all the other individuals, groups and authorities should not infringe individual rights. However, such concept that confronts the society for individual interests obviously goes counter to the tradition of non-western countries (Baehr, 1999: 13). Under the long-term feudal reign, eastern Confucianism stresses ethnics and obligations, attaches importance to rites and following the laws, and praises the practice of making individual sacrifice for overall improvement. It does not restrain the concept of human rights for individuals and believes power means intriguing against each other. Thus, Oriental culture holds negative attitudes toward human rights (Yu-Ching Wang, 2007: 27-28).

Actually, the above-mentioned views are suspicious to have taken a part for the whole. But in fact, relativism and universalism of human rights can be regarded as the cultural variable. For universalists, the human rights value originated from the west is the common culture for all the people in the world without regional divergence. However, relativists pay more attention to the coherence between international human rights norms and existing local cultural traditions and norms (Shih, 2002: 13-14; Donnelly, 1999: 62; Chen, 2002: 1047; Chih-Chieh Chou, 2005). In other words, the coherence refers to the compatibility between the concepts and arguments on western human rights and the general beliefs and

value system in non-western countries. Given that the concepts and value initiated by human rights groups conflict with the existing local traditions and norms, it is very difficult for international human rights norms to penetrate, let alone making them exert influences. For instance, the transnational efforts against circumcision for women have made little progress in many countries and regions. The main reason is the conflict between the western value and local deep-rooted culture and beliefs (Forsythe, 2001; Chih-Chieh Chou, 2006).

Many democratic countries with prosperous economy in east Asia refused to implement some of the human rights protection in its domestic laws on the reason of "Asia value," leading to low level of human rights universalization (Chia-Fan Lin, 2009: 9). For instance, the abolishment of death penalty is currently a controversial issue in Taiwan. On December 10, 2009, "Legislative Yuan" of Taiwan ratified ICCPR and ICESCR, making them as the domestic laws applicable in Taiwan. However, Article 6 of ICCPR stipulates clearly that "Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant." According to the covenant, Taiwan authority should take the stance of gradually abolishing capital punishment. In addition, Article 8 of the Implementation Act of ICCPR and ICESCR in Taiwan stipulates that government of various levels should review laws, regulations and measures according to the two covenants and make modification and improvement within two years after the law comes into effect. However, more people are against abolishment of death penalty, leading the situation in a deadlock. Only when the western concept on human rights considers the cultural traditions, historical experience and the mainstream opinion in civil society in non-western countries during the universalization process can it be accepted by local people and exert its influence (Chih-Chieh Chou, 2005: 99).

4.1 Bridge between Relativism and Universalism: Regional Human Rights Regimes

In addition, developing multilateral human rights norms with regional cultural characteristics can help ease the confrontation between human rights universalism and relativism. For instance, Africa human rights norms bear local characteristics. In fact, Africa human rights norms are centered with African Charter on Human and People's Rights (also known as Banjul Charter) (Mbaye 1992: 54; Nmehielle 2001). The Charter was adopted by 53 members of Organization of African Unity in 1981 and came into force in 1986. By July 2008, a total of 53 African Union members had signed the charter, covering nearly all the African countries. Africa human rights norms reflect the spirits of UN documents related to human rights and the regional traditional characteristics in Africa. First, the charter consists of not only rights protection, but also responsibilities; second, the charter covers people's rights, which represent the rights to develop, as well as rights for individuals; in addition, it also contains civil and political rights, people's economic, social and cultural rights; last, during the process of formulating the charter, the state parties were authorized to strengthen

the compulsory stipulations and necessary restraints that they focused on within the right scope protected by the charter (Flinterman 1999: 163; Shelton 1999: 351). The following is the localized characteristics of African Charter on Human and People's Rights:

1) Emphasizing the Right to Development:

According to African Charter on Human and People's Rights, the Charter takes into consideration "the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights." One of the important characteristic is that it attaches great importance to the right to development, which is also reflected in the preamble of the Charter:

(The African States members of the Organization of African Unity, parties to the present convention entitled "African Charter on Human and Peoples' Rights") are convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.

Clue of connecting the right to development (as a kind of people's right) with various rights for individuals can also be found in UN human rights documents. One of the sources of the concept is from Africa and is completely included in African Charter on Human and People's Rights (Mbaye 1985: 19).

2) Highlighting people's rights

African human rights norms clarify the scope of people's rights and separate them from rights for individuals (Kiwanuka 1988: 80). People's rights include the right of people to self-determination and the right to full sovereignty over their natural resources. African Charter on Human and People's Rights also includes the right to development and the right to peace, and "the right to a general satisfactory environment favorable to their development" (see article 20, 23 and 24 of the Charter).

3) Stressing obligation and overall situation:

Renowned African-descendent jurist Mbaye pointed out that in Africa, law and obligation are regarded as two facets of the same reality: two undividable facts (Mutua 1995: 339). Thus, African Charter on Human and People's Rights insists on obligations and rights. The Charter stresses obligations in two areas: the obligations that can be described to be related to rights; and the norms under the name of obligation that are actually used to restrain rights. For instance, Item 2 of Article 27 claims that, "The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest." Obviously, the above-mentioned obligations vary greatly in terms of whether or not the rights for individuals should be subject to collective rights, or whether or not one should consider the collective security. Especially the latter, its obligation

form is very possible to infringe human rights because of its vague definition (Dingake 2000: 371). In addition, Item 4 of Article 29 stresses that "(The individual shall also have the duty) to preserve and strengthen social and national solidarity, particularly when the latter is threatened." This stipulation means that a state can unlimitedly control the scope of the rights enjoyed by individuals.

4) Focusing on negotiation and conciliation

Differing from the human rights norms in the Americas and Europe, African human rights regimes develop to prevent state mechanism or individuals from infringing human rights in large scale, and to negate their practices in this regard, instead of dealing with particular cases of infringing rights of individuals. For this reason, African human rights regimes focus on negotiation and conciliation.

According to the traditional law concepts in African countries, conciliations, rather than legal procedures, are often used to settle disputes. To settle a dispute, various parties involved often have discussions, trying to find a solution acceptable for all parties. Parties involved always try to avoid settling disputes through court trials, because they think court trials would lead to hostility among them. Court trials would only lead to endless arguments, instead of solutions (Mbaye 1985: 27).

5) Combining with rights for individuals of local cultures

Besides the non-discrimination clauses and equal protection clauses, African Charter on Human and People's Rights also has stipulation on freedom of movement, specially prohibiting "mass expulsion of non-nationals. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups" (see Item 1 and Item 5 of Article 12 of the Charter). Meanwhile, the Charter declares that every individual shall have the right to education and can freely take part in the cultural life of his community; however, it also states that "The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State" (see Item 3 of Article 17 of the Charter). In addition, Article 18 also indicates its focus on families by defining the family as "a natural unit and basis of society." It stresses that "The State shall have the duty to assist the family which is the custodian or morals and traditional values recognized by the community."

Some cases in Africa show that universalism and relativism are not in a zero-sum game in the global human rights governance. It is good for universal global human rights laws and regulations to develop the regional human rights norms by combining with local cultures. Such norms may be favored by the countries within the regions and are very likely to be domesticalized. In general, international and regional human rights laws and regulations and regimes are the value connotation and impetus of human rights universalization and sovereignty states play the key roles in domesticalization of human rights norms and implementing human rights protection. The human rights situations in civil society can be an

indicator to observe the governance of the state mechanism; and civil human rights groups and social movement activist are very important to supervise and explore problems on human rights, so as to ensure that human rights concepts and policies can really cover the target of traditional human rights protection – individuals. In other words, human rights values should borrow supports from international legalization to be popularized; meanwhile, various states should also implement international human rights norms in their domestic laws to enable human rights concepts to be protected and realized by means of law enforcement.

V. Interplay Among Economic Development, Political Reform and Human Rights Protection: Pragmatism in Taiwan

As mentioned above, after ICCPR and ICESCR were ratified by Taiwan "Legislative Yuan" on March 31, 2009, Taiwan is now the only Chinese society with complete framework of human rights norms, attracting attentions from allover the world. In fact, after Taiwan quit the United Nations in 1971, it lost its membership in the important international organization and disjointed itself from the international human rights regime centered with the United Nations; meanwhile, it also lost its opportunity of growing with international human rights laws and regulations. However, since Taiwan started the democratization process in the late 1980s, its human rights protection and practices have been improving. At the 2009 Human Rights Report released by the U.S. State Department, Taiwan was listed as a region of respecting human rights. Freedom House also listed Taiwan as a region with complete freedom in its 2010 report. Taiwan "Legislative Yuan" ratified ICCPR and ICESCR; meanwhile, the Implementation Act of ICCPR and ICESCR came into effect on December 10 after its leader Ma Ying-jeou endorsed them. Thereafter, the two covenants have become the laws in Taiwan and are applicable to all law enforcers and the public. So far, Taiwan has completed the work of localization of International Bill of Human Rights. This shows Taiwan has reached the international standard in human rights protection; more importantly, it indicates the concrete achievements of Taiwan in promoting the work of domesticalizing human rights norms and implementing human rights practices (Chih-Chieh Chou, 2009c). This move not only lifts human rights norms in Taiwan, but also promotes the implementation of human rights, making Taiwan an example of human rights for Chinese societies.

Though many human rights concepts have become international norms, the world-recognized human rights concepts still encounter various difficulties in the process of being legalized and domesticalized. Taiwan is no exception. If we observe the governance performances of the state mechanism in Taiwan with human rights conditions as the indicator, Taiwan is far from full fulfillment. Human rights development can be divided into three stages: (I) political and civil rights (fundamental rights); (II) economic, social and cultural rights (rights to existence); and (III) collective rights, which is also known as

rights to sustainable development, stressing the harmonious relations among human beings, environment and other creatures (Donnelly, 1989: 210-121). Taiwan has fully fulfilled its first-stage rights in forms, but is still seriously influenced by political factors in practices. As for the second and third-stage rights, obvious urban-rural and North-South gaps have emerged in practices. We can also view the problem from different angles of human rights. Take migrated labors and foreign brides for example; they even fail to get the first-stage human rights. Owing to long-term authoritarian rules and one-sidedly promoting economic development, the state mechanism in Taiwan, that should be used to protect human rights, is now infringing human rights. Thus, for a long time, civil human rights groups and social movement activists are playing an important role in supervising and finding out human rights problems so as to constantly encourage state mechanism to improve human rights policies in an attempt to make these human rights policies cover the target of traditional human rights – individuals. However, though the "Constitution" of Taiwan stipulates the supremacy of international laws and treaties, and the government also ceremonially declares its willing to abide by the universal international human rights laws and regulations, human rights issues and protection are still the decision-making options that are very likely to be neglected when state mechanism and civil societies cannot effectively solve their different views on the overall development of the region. This is the legacy of the long-term political and economic development in Taiwan (Chih-Chieh Chou, 2010: 69).

Actually, the overall development of Taiwan is companied with dual crises: it gives top priority for a long time to economic development, leading to alienation and confrontation between human and environment; the high political mobilization after democratization also causes alienation and rivalry among people. The above-mentioned problems have been seriously blocking the promotion and protection of human rights values and concepts. On the one hand, the government neglects the formation of civil society and popularization of human rights concepts in order to promote economic development, leading to the phenomena of paying attention to development while neglecting human rights, focusing the north part while neglecting the south and contorted development in urban-rural development. In Southern Taiwan, grave human rights problems exist in no matter the rural areas with serious population outflow and numerous small factories, or in the urban areas with many industrial zones. All the problems including the human rights of the disadvantageous groups like women, the seniors and children, the foreign-related human rights such as migrated labors and foreign brides and even the environmental and ecological rights are in urgent need of being focused and improved (Chih-Chieh Chou, 2007: 16). On the other hand, political leaders utilize their extraordinary charisma among people during democratic transition to accumulate their political interests by utilizing ethnic cleavage and sense of sorrow, and twist the procedural democracy by involving cronyism and power abuse. They also distort

law applications with their political power for special purposes. For a long time, many of the cases handled by the government were the practices of infringing human rights and public interests under the name of "rule of law" and "technocracy." Under the guise of *due process*, the substantive justice has totally vanished, undermining the fundamental values of mutual trust, the concepts of right or wrong and the practices of respecting different views in Taiwan society (Chih-Chieh Chou, 2009b: 18).

Thus, reviewing and rethinking human rights conditions in Taiwan is not only the important consideration for the decision-making layer to deepen democracy, but also an indicator to observe whether or not Taiwan can establish a real polyarchic society. The reason is, the political system of a country or a region is mainly made up of upper level political society, middle level economic society and lower level civil society. The upper level political society refers to the government departments to make decision makings and provide stable internal and external environment. In a democratic society, it is there to serve the other two levels; the market-oriented economic society, mainly referring to private sectors, mainly provides profits and welfares for itself, state mechanism and civil society; the lower level civil society is actually the foundation of the whole political system by providing talented people, laborers and capital needed by the other levels, and has become the area to implement public policies and activate market economy (Easton, 1990). Thus, constructing an independent and diversified civil society that respects human rights is the key to maintain operation of political system. However, in Taiwan, the nutrient absorbed from civil societies and its sacrifice are used to promote vibrant growth of economic society and the existence of state mechanism (Chih-Chieh Chou, 2010: 70). Of course, the stability and development of the above two levels can feed back civil society; the long-term neglect of the construction of civil cultures and democratic society leads to the emergence of dual crises. In this sense, human rights protection and practices have become the best indicator to observe the above-mentioned problems (Chih-Chieh Chou, 2010: 70). Hence, the concerns and improvement of human rights protection and practices should be the key to improve Taiwan's international reputation and establish high quality of democracy.

After ICCPR and ICESCR were domesticalized, the stipulations of human rights protection of the two covenants have domestic legal bindings (see article 2 of the implementation law). However, if the government regards this as a stage-based task to show its attention to human rights to the international community and fails to take follow-up actions, the efforts of the government in promoting domesticalization of international human rights norms and attaching importance to human rights-related affairs would be narrowed down. In fact, on May 14, 2009, when Taiwan leader attended the signing ceremony of the covenants, many people, including students, protested outside that the protest law in Taiwan goes counter against the human rights covenants. This move indicated that Taiwan

government cannot neglect the conflicts between the existing domestic laws and regulations and the two covenants (Chih-Chieh Chou, 2009c). In the future, so long as the people think their interests are infringed by laws, regulations and measures that are suspected to conflict with the covenants, they can cite the two covenants to claim their remedies. In addition, the implementation law authorizes "the central and local governments" to review and modify the existing laws and regulations that conflict with the covenants, and the work should be finished within two years (see article 8 of the implementation law). "Ministry of Justice" is responsible for human rights training, initiation and education. All these indicate that the implementation and promotion of the two covenants depend on the government departments, while the assistance and supervision of civil human rights groups and academic circles in law modification and education promotion are neglected.

Facing the dual crises, we should follow the international human rights regimes in formulating human rights laws, regulations and measures; meanwhile, the broadening and deepening of human rights values in civil society and political arena is also a necessary measure. The goals of doing these are to reconstruct individual-group relations in civil societies, strengthen power-responsibility relations in political arena, improve the quality of human rights in government official system and maintain diversified balance in overall development. Actually, it is a fact that Taiwan has become a diversified and democratic society. What the government should make efforts to do are not only to demonstrate diversified facets, but also to stress the process of practice and tolerance and to implement the spirit of human rights. The maintenance of diversified cultures in human rights protection relies on the reconstruction of individual-group relations in civil societies. In Taiwan which was dominated and distorted by economic development and political mobilization for a long term, it is more urgent to establish a harmonious society with sustainability than the Chinese Mainland. With different beliefs, topics and status, every people may become the minority or the majority on certain occasions. Thus, respect and tolerance are the basis of deepening human rights education. Only after constructing a society that respects human rights can Taiwan go beyond the stage of form-based democracy. Administrative departments are necessary to create a human rights-based Taiwan. Law and regulation formulation and civil groups creating discussion arenas are obviously not enough. It is more important to implement institutionalization. Thus, the problems cannot be solved only by holding specific activities, planning individual budget or handing out subsidies. It is the responsibility of the government to construct diversified cultural and human rights-first soil, instead of the rhetoric of political demonstration. Only through the continuous and substantive efforts of government and supervision and criticism of civil groups, can we really achieve the human rights-rooted Taiwan, and can the island continue its reputation of role model on human rights protection for the Chinese societies.

VI. Coordination between Local Cultures and International Human Rights: Gradualism Thinking of the Chinese Mainland

In Taiwan, a majority of people in favor of human rights universalism, believing that the human rights values developed by western countries are borderless, applicable everywhere and the common culture of all human beings. So, they have no difficulty in recognizing the values. However, the measures and channels of domesticalizing international human rights norms should also consider local laws and cultural traditions. For the Chinese Mainland, human right is imported from the western countries, which is often used as a tool by the western force to expand its influences to region with non-western civilizations. Owing to the fact that human rights philosophy and concept originated from the Enlightenment in Europe, human rights value is regarded as the western value, which unilaterally flew to non-western countries with the process of modernization and colonialism. After making great achievements in reform and opening up, Chinese Mainland, together with some eastern Asian and Latin American countries that have made progress in modernization, especially those emerging countries or developing countries, find it difficult to accept the hegemony of western countries in interpreting human rights concept. They believe the western countries use human rights as a tool to seek their national interests (Chou, 2008: 141).

Notably, starting mid-1990s, Chinese Mainland's reaction facing the pressure of international human rights also changed from hostile attitude with the excuse of national situation to strengthening its interpretation on human rights connotation and norms by actively utilizing its increasing international position. In 1997 and 1998, Chinese Mainland signed the two international human rights covenants; in March 2001, the Standing Committee of the National People's Congress ratified ICESCR. Several impetus encouraged the Chinese Mainland to sign the two human rights covenants, including domestic drives as well as the pressure from the international community, especialy the United States and the EU. In addition, Chinese Mainland has been a member of the UN Human Rights Council after it was established in 2007. Even though the gap between local practice and international standard is still huge, Chinese Mainland's efforts of actively participating in international human rights regimes and improving human rights are really impressive!

6.1 Effort and Dilemma of Local Values Building through Linking Confucianism with Human Rights

Viewing from the angle of international situation, with the globalization effect expanding to cover all the areas of people's life, human rights have become one of the focuses of discussion between globalization and localization. After reform and opening up to the outside world in 1979, Chinese Mainland's economic development repeatedly surprises

the western countries, and even makes them feel threats. Chinese Mainland also frequently challenges the argument that western modernization experience is the only universal model. Undoubtedly, Chinese Mainland's economic development mode combines one-party rule with market economy. All the people from the governments, academic circles and civil societies believe that Chinese Mainland's modernization path cannot be interpreted and illustrated with the western framework. In this sense, Chinese Mainland's human rights discourses also have its own local culture, which is different from the western culture. Based on this, Chinese Mainland hopes to break the hegemony discourses of human rights universalism of the western countries (Dirlik, 1995: 229-273; Chen, 1999: 213-215). The initiators of such discourses believe that the east/China has different political, economic and social structure from the west, which leads to different cultural traditions, values and naturally views on human rights.

The Confucianism has been playing a contradictory and extreme role in the process of China's modernization. The Westernization spirits of the May Fourth Movement denied the value of the Confucianism; during the Cultural Revolution, the movement of "smashing four olds and establishing four new" regarded the Confucianism as the burden of the old age and wanted to eliminate it. The "Culture Craze" started in the 1980s was known as a new wave of enlightenment movement, which began the reasonable rethinking of traditional culture (Tu, 1994: 1-34). The 1990s witnessed the rejuvenation of Chinese traditional culture. The Confucianism won confidence from the common people and became the core cultural element in the Chinese model, which guides Chinese Mainland's development. However, the rejuvenation of the Confucianism was contributed not only by domestic factors, but also the stimulation from the outside, which is more important.

In his book *The Protestant Ethic and the Spirit of Capitalism*, Sociology master Max Weber also mentioned the Confucianism, believing it is a stumbling block hampering China's modernization. The modernization theory in the 1950s and the 1960s also echoed Weber's opinion under the tradition-modern dual framework (Goodhart, 2003: 935). But in the 1970s and the 1980s, the U.S. society witnessed economic success of Asian-Americans. They were called "model minority" and their success was attributed to the influence of the Confucianism (Chou, 2008b: 219-229). On the other hand, Singaporean former Prime Minister Lee Kuan Yew, while making efforts in economic development, attached great importance to the values of the Confucian culture and formed Asia value through connecting economic development with the Confucian culture (Dallmayr, 2002: 173). Influenced by the nationalism emotion and the thinking of localization in 1990s, intelligentsia of the Chinese Mainland realized that the Confucian culture can represent the "Chineseness," and can be used as a weapon of human rights relativism for the East Asian Confucianism civilization to confront the human rights universalism insisted by the western countries. Furthermore, it can

be the cultural base in constructing the "Chinese capitalism" and even the spiritual source for China's modernity.

When Chinese Mainland attempt to recover its alternative human rights outlook based on China's existing spirits and traditional culture, it focuses on its uniqueness that Chinese Mainland is not willing to be summarized by western countries; however, it is also possible for Chinese Mainland to overstress the cultural differences, which may lead to criticism by Sayid to the western "self/other" dichotomy. Meanwhile, Chinese Mainland's discourse on local human rights is not totally different from the western model and approaches, which is even considered to be used to cope with the pressure from the west.

VII. Conclusion: Coexistence of Local Culture and International Norms – Joint Efforts across Taiwan Straits to Build Harmonious Society and Chinese Discourse of Human Rights

In fact, to discuss the human rights development from the dual angle of globalization and localization, we do not mean to focus on the arrival or the ending of human rights age, but to discuss whether global human rights norms can directly or indirectly form the legality of acts of states and what ways can be used to achieve this goal. In addition, related variables in measuring the acts of a sovereignty state are also very important. Thus, combining the discussion and research methods related to international relations, comparative politics and cultural studies can probably provide wider vision and more extensive interpretation for Chinese Mainland's discourse related to human rights, and even the practices of Taiwan of following the universal human rights values through domesticalizing international human rights norms.

Viewing from international politics, a state possesses the relative powers to resist the pressures from the international community. However, power itself is not adequate to compel a state to follow international norms like human rights. The power relations between the state that exert the pressures and the state that receive the pressures cannot indicate which states will follow the international norms and which states will not. Hence, it is suspicious whether external compulsory forces are the key to promote domesticalization of international norms in a sovereignty state. On the contrary, merging the opinion of constructivism into domestic factors can help provide a sound interpretation for the question of how international norms exert their influences (Chou, 2004: 226-227). Why are a country's reactions so different while facing the same international system and accepting similar international pressures? In this article, I believe that the internal cultural compatibility and the changes of nationalism factors are greater than the influences of domestic politics and social structures. In addition, with the universalization of western human rights values and under the current international atmosphere, Chinese Mainland also needs to construct the human rights discourse with local

characteristics for counterbalance, or at least abides by the values in a perfunctory manner, and then puts forward proper reason when it wants to object some of them according to the above-mentioned norms.

Meanwhile, as the Chinese Mainland government still regards the rights to development and existence as the prior goal in human rights protection, the civil and political rights practices still lag behind that of the international norms. Thus, even if Chinese Mainland changes its attitude from negative resistance to gradual coordination, the country still cannot totally follow the so-called universalism. More importantly, Chinese Mainland tends to overthrow the western universalism by holding high the banner of its local cultures of the neo-Confucianism, but still cannot go beyond the "self/other" dichotomy (Tatsuo, 1999: 28-29). Hence, Chinese Mainland's alternative discourse of human rights is not indigenous, but based on western standards. This discourse just thinks about how to resist western discourses in this regard in a reverse manner. Thus, Chinese Mainland's alternative discourse of human rights stresses its uniqueness that Chinese Mainland is not willing to be summarized by western countries; however, it also possibly overstresses the cultural differences.

More importantly, the alternative discourse of human rights developed in Chinese Mainland is not really indigenous that is different from western models and approaches. On the contrary, it unconsciously falls in the rhetoric usually used by the western countries to criticize Chinese Mainland's human rights development: Chinese Mainland's discourse on human rights is probably used by the state mechanism to cope with the pressures from the west with cultural rejuvenation as the tool and the formation of neo-nationalism as the connotation so as to consolidate its rule. By observing the development experience of another Chinese society – Taiwan, we can find that self and other are never innocent and dependent and they stipulate and influence each other to some extent; after that, they change, shift directions, get modified and improved. Hence, in the attempt of constructing local human rights discourse, the Chinese Mainland government should have accumulated sufficient confidence to realize that western theories and concepts, and Chinese traditions and culture can coexist and even support each other. Experience from Taiwan's practices shows that the human rights values in the two Chinese societies can be gradually linked up through exchanges and dialogues across Taiwan Straits.

Chinese Mainland attaches great importance to the creation of a harmonious society. The key to its success lies in the implementation and protection of economic, social and cultural rights. Taiwan has also achieved progresses in the practices of above-mentioned human rights policies. So, the dialogues related to human rights across Taiwan Straits can cover many topics. Taking the economic, social and cultural rights for example, the topics cover social welfare, disease prevention and treatment, ecological environment, urban-rural development gap and the human rights for disadvantageous groups such as women,

the seniors and immigrants. With the successive launch of activities and increasingly closer relations across Taiwan Straits, the popularity of soft values and the practices of a harmonious society have become the topic for deepening interaction across the Straits. In the foreseeable future, human rights research circles across Taiwan Straits can even begin to think about the issue of how to form the common human rights discourse of Chinese societies so as to make joint efforts in demonstrating and interpreting human rights values and practices of the Chinese societies!

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Human Rights and Global Governance: Challenges and Opportunities for Civil Society

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UK

Introduction

In our increasingly globalised and interdependent world, international law addresses the urgent need for shared rules and shared values to help prevent disputes and it provides the essential framework for trade, travel and cooperation among nations. The report, "Our Global Neighbourhood" published by the Commission on Global Governance in 1995 presented a strong argument for the rule of law world-wide. "The emerging global neighbourhood needs to live," the report's authors conclude "by a new ethic that is underpinned by a culture of law." There are, however, few enforcement mechanisms for international law; most standards are self-enforced through a combination of longer-term self interest and general social pressures to conform. Respect for the rule of international law can be quite tenuous – particularly when it is disregarded by stronger nations – and it needs to be sustained through the commitment of nation states as well as the wider society in which international law is embedded. The sources of international law – the international conventions and customs – are the outcome not only of deliberation among nation states, but also social and historical processes and an evolving public discourse about our values. This paper provides a brief overview of the contribution of civil society to this international discourse, in particular the way human rights organisations have helped to shape global institutions for the administration of criminal justice. The influence wielded by NGOs also brings its responsibilities and the paper briefly reviews the challenges NGOs face in demonstrating their legitimacy before concluding with a call for Chinese civil society to be more engaged in the global conversations which are influencing the development of international institutions.

This paper reflects a number of the concerns which interest us at "The Rights Practice." One of our priorities is the protection of human rights in the administration of criminal justice, in particular, the prevention of torture and ill treatment and the right to a fair trial. Another priority is to expand access to justice and to support the legal empowerment of the poor and vulnerable in society. Although governments have the main responsibility to protect these rights, good governance is the outcome of the interplay among a range of institutions, including government departments, the courts, lawyers and civil society. For this reason, The

Rights Practice supports public participation in policy making and in holding governments to account in the protection of human rights. Through our various projects we support lawyers, legal scholars and NGOs to contribute to the policy making process through their research and analysis, we promote a watchdog role for civil society through building its capacity to monitor compliance with human rights standards and use international mechanisms, and we advocate the provision of channels to facilitate and encourage greater public participation in decision making processes.

Global Governance

Global governance began to appear as a topic for policy debate in the 1990s, following the end of the Cold War and in response to increasing globalisation. Although some critics fear that discussion of global governance is a prelude to talking about global government, most scholars and commentators would probably define global governance "not as government but as a minimum framework of principles, rules and laws necessary to tackle global problems, which are upheld by a diverse set of institutions, including both international organisations and national governments."[1]Much of the recent discussion around global governance has focused on its fitness for purpose in tackling global crises particularly climate change, the economic and financial crisis and security[2]. But global governance is also a feature of the administration of criminal justice driven, on the one hand by an increase in transnational crime and the movement of people, and on the other hand by the claims for universal standards of justice. New opportunities for transnational crime – for example, drug and people trafficking and cybercrime – arise from the increase in the cross-border movement of people, goods, money and information brought about by globalisation. These challenges call for international cooperation and shared standards not only on crime prevention and investigation, but also on the prosecution of offences and the treatment of alleged offenders.

The administration of criminal justice has typically been a matter for national institutions of justice, and governments, jealous of their sovereignty in this area, have been wary of measures that foster an international approach. Nevertheless the principle of national jurisdiction over crime has been eroded since the Second World War with the evolving international jurisprudence on torture, genocide and other crimes against humanity. The powerful declaratory statement, in Article 5 of the Universal Declaration of Human Rights, that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment reflected the widely shared post-war revulsion at the concentration camps and

1. LSE Global Governance, http://www.lse.ac.uk/Depts/global/2research.htm.

2. LSE Global Governance, Held, D. Kaldor, M. and Quah, D, The Hydra-Headed Crisis (2010), www.lse.ac.uk/Depts/global/PDFs/The%20Hydra-Headed%20Crisis.pdf.

other horrors of the Second World War. The prohibition of torture was accepted without controversy in the landmark Universal Declaration of Human Rights as well as in the Geneva Conventions of 1949 and the 1966 International Covenant on Civil and Political Rights. This strong desire to prevent the use of torture and other cruel punishments also motivated drafters to prohibit the use of torture in the European Convention on Human Rights and subsequent regional instruments, notably the American Convention on Human Rights and the African Charter on Human and People's Rights.

The laws, principles, standards and institutions which now provide the global framework for tackling the use of torture are the outcome not only of negotiations among states parties at the United Nations, but also the passion and commitment of civil society activists from around the world who have campaigned for action against torture at a global level. International awareness of the continuing problem of torture in the post war era was instigated by the activities of NGOs and focused on the notorious developments in post-1973 Chile and the death of Steve Biko in South Africa[1]. The NGO campaigns stimulated the General Assembly to adopt the Declaration against Torture in 1975, the subsequent Convention against Torture in 1984, and the 1985 resolution by the Commission on Human Rights to appoint a Special Rapporteur on Torture with a mandate to examine questions relevant to torture in all countries regardless of whether they have ratified the Convention.

Following a fact-finding mission to Chile in the months after the coup which brought General Pinochet to power in 1973, Amnesty International published its first report documenting the human rights violations that had taken place, in particular the use of torture and enforced disappearances. Founded in Britain in 1961 to campaign for an amnesty for prisoners of conscience Amnesty International, as it is now known, is one of the oldest international human rights organizations. Soon after its establishment Amnesty's committee recognized the importance of the detailed documentation of cases. This attention to the facts on the ground and the principles of independence, neutrality and impartiality became the defining features of Amnesty International and set the standard for the many human rights organizations around the world which have been established in its wake. Within Chile itself a number of human rights organizations arose in response to the systematic violation of these rights and by 1988, 52 institutions – and some 6,500 individuals – comprised Chile's human rights movement. Participating in these organizations were leading religious figures, lawyers, victims' families and medical and mental health professionals.

The detailed, case-based documentation of human rights violations made by civil society organizations has become a valuable contribution to the evolving jurisprudence of international human rights law. This watchdog role of NGOs is exemplified by their

1. Rodley, Nigel, *The Treatment of Prisoners under International Law* (1999), Oxford University Press, p. 45.

submissions to the human rights treaty bodies. In furtherance of the absolute prohibition of torture under international law both the Human Rights Committee which monitors compliance with the International Covenant on Civil and Political Rights and the Committee against Torture which monitors states parties' compliance with the Convention against Torture welcome reports from NGOs as they consider States Parties' periodic reports. The submission of detailed factual reports and analysis by a range of both domestic and international NGOs enables the Committees' members to fulfill their duty to monitor a state party's compliance with the treaty. The Office of the High Commissioner for Human Rights sees its cooperation with civil society as a strategic priority; its communications clearly state that the knowledge and expertise of civil society organizations help OHCHR achieve its mission.

Building on the evidence and insight gained from handling cases NGOs are also well placed to put forward recommendations for policy reform and campaign for their adoption. This participation in the policy making process may take place at the national and regional level as much as at the international level. Over time policy reform at the national and regional level may be adopted internationally through the influence of global coalitions of civil society organizations and the support of like-minded governments.

Britain is home to many NGOs including a significant number which tackle problems with the administration of criminal justice. Many of these organisations were set up to address problems which arise within the UK. For example, the organisation Inquest is a charity that provides a free advice service to bereaved people on the conduct of inquests with a particular focus on deaths in custody. They use casework to inform their research, parliamentary campaigning and policy work. The Howard League for Penal Reform is the oldest penal reform charity in the UK. It was established in 1866 and is named after John Howard, one of the first prison reformers. The Howard League campaigns for fewer people in prison and better standards for community rehabilitation.

REDRESS is a British-based human rights organisation that helps torture survivors obtain justice and reparation. It was founded in 1992 by Keith Carmichael, a torture survivor in the UK who had been imprisoned in Saudi Arabia, and the organisation now works with survivors around the world to help restore their dignity and to make torturers accountable. Its strategies include casework, advocacy and capacity building. Reprieve, another British-based NGO, provides legal support to prisoners in other countries who cannot afford lawyers and are accused of the most extreme crimes including murder and terrorism. Reprieve assists European prisoners facing the death penalty and prisoners being held "beyond the law" as part of the war on terrorism. Reprieve is currently representing 33 prisoners in Guantanamo Bay. The London-based organisation Fair Trials International campaigns for fundamental rights for people facing the ordeal of criminal charges in a country other than their own.

In addition to providing legal assistance and advocacy to individuals in need, FTI also fights the underlying causes of injustice in cross-border cases through policy interventions, research and training. Under an umbrella campaign of Justice in Europe, FTI is lobbying for improvements to the European Arrest Warrant under which each year thousands of people are transferred under Europe's new fast-track extradition system to face trials or serve prison sentences in a foreign country. FTI is concerned that this procedure, originally introduced to tackle terrorism, is being used too indiscriminately and is undermining legal protections on extradition. They draw on their own casework to conduct research, inform the media, write to senior politicians, and work with counterparts in other European countries for reform to the implementation of the European Arrest Warrant.

UK-based human rights NGOs campaign on many issues that can embarrass or bring them into conflict with the British government. Liberty and Justice campaigned loudly and persistently against the Labour government's plans to extend the period of pre-charge detention for terror suspects to as long as 90 days and are continuing to lobby the Coalition government to reduce the current 28 day limit arguing that the case for such lengthy pre-charge detention for terror suspects has not been proven and comparing the UK's policy unfavourably to the practice in comparable countries. In their submission for changes to the current policy Liberty underlines the influence the UK has in advancing the cause of human rights and the danger that a retrograde measure would send a negative signal to the international community. They quote Asma Jahangir, Chairperson of the Human Rights Commission of Pakistan, who worries that action by Britain would offer a "poor precedent for dictators to follow on the pretext of fighting terrorism. This downward trend will be detrimental to the rights of individuals."[1]

Redress, Reprieve and many other leading UK NGOs have also been calling for a thorough and independent inquiry into the allegations that the UK was complicit in the mistreatment of prisoners held abroad as part of the war against terror. Following the new Coalition government's decision to set up an inquiry these organisations have continued to make the case for the inquiry to be fully independent and have sufficient powers to investigate and hold to account. To help ensure the inquiry succeeds they also argue for the participation of civil society. NGOs can assist, they argue, in the design of the inquiry and the lines of investigation; they can help represent torture survivors, many of whom are still in detention in Guantanamo Bay and elsewhere; and they can help to ensure that the inquiry is credible and engages with the public's concerns. NGO scrutiny of the inquiry will give others confidence that the process is robust and fair.

The questions this inquiry will be addressing are very important, not just in terms of the

1. http://www.liberty-human-rights.org.uk/pdfs/policy10/liberty-briefing-on-renewal-of-28-days-pre-charge-detention.pdf, p. 12.

rule of law and justice in the UK, but also in relation to reinforcing the absolute prohibition against torture and the universal jurisdiction over such crimes. It is very important that a country such as the UK investigates the very serious allegation that UK state actors or agents had knowledge of or were involved in the illegal rendition of individuals and the use of torture or other mistreatment by overseas police or intelligence services. If the British government were to ignore such serious allegations it would undermine respect for international law. The principle of universal jurisdiction to try crimes of torture and other crimes against humanity regardless where the crimes have been committed has been recognized under international law even before the establishment of the international military tribunal of Nuremberg following the defeat of Nazi Germany. Nowadays, the vast majority of states recognize universal jurisdiction as a permissible ground of jurisdiction, but few states have made much progress in ensuring that universal jurisdiction is a reality in their courts.

Efforts to establish a global criminal court date back to the early nineteenth century and there were serious calls after the Franco-Prussian War and, again, following the First World War. After World War II, the Allies set up the Nuremberg and Tokyo tribunals to try Axis war criminals. The International Law Commission was asked by the United Nations to draft a statute for an international criminal court in the early 1950s, but the Cold War stymied their efforts and the task did not resume until the early 1990s. In 1995, following the preparation of the first draft of the ICC Statute a small group of non-governmental organizations met and decided to work together to promote the establishment of a fair, effective, and independent International Criminal Court (ICC). Eventually a coalition of over 2,000 NGOs came together with like-minded governments and international organizations to help establish the International Criminal Court, widely acclaimed to be one of the greatest advances in international law. Thanks to effective promotion of the ICC there are now 113 States Parties and many other nations proceeding towards ratification and accession. The International Criminal Court is designed to complement existing national judicial systems: it can exercise its jurisdiction only when national courts are unwilling or unable to investigate or prosecute the crimes of genocide, war crimes or crimes against humanity. This approach acknowledges that the nation state has primary jurisdiction over crimes committed on its territory but that its jurisdiction is limited by international customary law prohibiting torture, genocide and other crimes against humanity.

The establishment of the International Criminal Court underscores the importance of challenging impunity for the worst types of criminal acts. Although justice systems must continue to pursue the prosecution of torturers regardless of where the offence took place, more needs to be done to prevent the use of torture in the first place. In recent years campaigners against torture won a victory with the coming into force of the Optional Protocol to the Convention against Torture. Based on the idea that regular and unannounced

visits to all places of detention are one of the most effective ways to prevent torture, the Swiss lawyer Jean-Jacques Gautier set about developing a system for visiting places of detention. To achieve his vision, he founded the Swiss Committee against Torture in 1977 which later became the Association for the Prevention of Torture (APT). His ideas were originally adopted at the European level and led in 1987 to the establishment of the Committee for the Prevention of Torture under the auspices of the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment. It took a longer time for the idea of a universal scheme of visiting places of detention to be accepted at the global level, but the Optional Protocol finally came into force in 2006 and now 55 countries from all continents have ratified the treaty.

Ratification of the OPCAT by countries around the world demonstrates that ideas about sovereignty and the administration of criminal justice are not fixed, but can evolve in response to a changing social and political context and as understanding and acceptance grows that unannounced monitoring visits to prisons and police stations are an effective and affordable means to prevent torture. The story of the adoption of the OPCAT also illustrates how the inspiration and tenacity of individuals, such as Gautier, can bring about significant advances to global governance and protection of human rights. As the Chairman of the Norwegian Nobel Committee observed when he presented Amnesty International and the Northern Ireland Peace Movement with the Peace Prize in 1977: "these two movements have one thing in common: they have sprung spontaneously from the individual's deep and firmly rooted conviction that the ordinary man and woman is capable of making a meaningful contribution to peace."

Challenges for Civil Society

Civil society can be defined as associational life where people come together voluntarily for actions that lie beyond the family, government or for-private-profit business. In a recent report on the future of civil society in the UK and Ireland the report's authors argued that civil society was grounded in a distinct set of values such as social justice, solidarity, mutuality and sustainability[1]. Where historically civil society activity may have been organised around the church or mosque or within the local community, today, we live in a global village: the media, international travel and communication technologies bring to our attention problems people are facing half a world away. This paper has tried to illustrate some of the ways in which NGOs engage with public opinion, governments, the United Nations and other international organisations. The participation of civil society organisations helps to open up policy making to a diversity of opinion and perspectives. NGOs bring particular

1. Making Good Society Summary of final report of the Commission of Inquiry into the Future of Civil Society in the UK and Ireland, 2010.

expertise, usually based on knowledge obtained through practice in the field, and help to transmit the voices of those normally excluded from public policy debates.

Civil society organisations can play an influential role in shaping public opinion and developing policy and this brings with it certain responsibilities. One responsibility is to provide accurate and reliable information. But NGOs and other civil society organisations are also under pressure to demonstrate their accountability, legitimacy and effectiveness. One driver of this trend is the increasing scrutiny that the non-governmental sector is facing from governments, the private sector and the public. This scrutiny may be motivated by a concern to ensure donated funds are being spent effectively and efficiently; it may also be motivated by a worry about the kind of influence NGOs enjoy and the way that they can exert pressure on and cause embarrassment to multinational corporations and governments.

This challenge to NGO legitimacy is one that NGOs themselves should embrace. Civil society organisations, including human rights NGOs, need to reflect on the effectiveness of their approach and how they are accountable to the people on whose behalf they claim to speak out. More external and internal scrutiny will help to boost the credibility and quality of NGO work; in recognition of the benefits that can accrue to NGOs from growing accountability we are beginning to see an increasing number of self-regulation initiatives. Driven by NGOs themselves rather than imposed by governments these initiatives recognise that while the rights to freedom of association and freedom of opinion and expression provide a foundation for civil society activity, to wield influence in public life civil society organisations also need to demonstrate their legitimacy and accountability. Among civil society organisations in both the global north and the south there is an emerging consensus on the principles which underpin NGO effectiveness and accountability[1]. These include accountability to the people that NGOs serve as well as to staff and volunteers. Another widely shared principle is ownership and sustainability and emphasises working on an agenda which is based on the needs and priorities of local stakeholders. Other widely shared principles include transparency and good governance, organisational learning and independence and a respect for diversity, human rights and protection of the environment. It is not enough for NGOs simply to show that they are based on a commitment to social justice and human rights, they also need to demonstrate how these principles guide the work that they do on a day to day basis.

One of the drivers of NGO efforts to improve their own self-regulation is the nature of the relationship between civil society and the state. For example, in Columbia NGOs developed a "NGOs for Transparency Initiative" which was set up in response to government attempts to implement legislation that would restrict the activities of NGOs on the pretence

1. One World Trust / World Vision Briefing Paper Number 126, June 2010, "Responding to development effectiveness in the global South."

that the sector was not accountable or transparent. Where NGOs are advocating for social justice or human rights some governments see them as political competitors or intermediaries of foreign interests. Self-regulation among NGOs is a way of trying to build trust and legitimacy with governments and other institutions.

Concluding Remarks

This paper briefly illustrates some of the ways that civil society organisations have contributed to building a global architecture to protect human rights and helping to ensure that international institutions for the administration of criminal justice have a strong human rights foundation. The participation of civil society organisations in international policy making brings a diversity of voices and opinions to the process and contributes to better informed and more sustainable outcomes. As OHCHR puts it, "A dynamic and autonomous civil society, able to operate freely, knowledgeable and skilled with regard to human rights, is a key element in securing sustainable human rights protection in all world regions."

This paper also notes a tension in the relationship between governments and their own NGOs as well as with international civil society. The roots of this tension clearly lie in the human rights NGO's role as critic, but the global perspective of many civil society organisations and their commitment to universal values can bring them into conflict with governments exercised by narrower national concerns. The value-driven, human-rights focused participation of NGOs, lawyers and individual activists is essential in helping to shape the institutions for the global governance of crime, scrutinising their respect for human rights and ensuring that they are not narrowly driven by a security agenda. This process requires the participation not only of the large influential international human rights NGOs but also the rich diversity of local NGOs. Chinese NGOs are, however, largely absent from the civil society forums and debates which are taking place around the world. I very much hope that in the years to come we will see more and more Chinese citizens setting up NGOs and making "meaningful contributions to peace."

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Governance Gaps in Protecting Human Rights: Engaging Business in the Business of Human Rights

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In recent years, much has been written about globalisation and the positive and negative impact of business on human rights and how, why and if the corporate sector should be more engaged in both respecting and protecting rights. The debate has largely moved from the "if" business should be engaged with human rights, to the "how" (although there remains a set of persistent objectors who dispute this paradigm shift). But as the role and influence of corporations have increased globally so too has the confusion around what specifically is required of them. And, if there are expectations that companies should be engaged more substantially with human rights, what is the best mechanism for doing so? Corporations are not governments (who remain the primary protectors of human rights) but some do assume public functions and others are simply seeking (or are being "required" to seek) greater clarity around their role in respecting and protecting human rights within their fields of operation. Although ultimately beholden to its shareholders, a corporation's role in contemporary society – and its social license to operate – depends now on its ability to meet the expectations of an increasingly diverse range of stakeholders including consumers, customers, business partners and the community in which it operates. Respect for human rights is now not unreasonably one of these expectations.

This chapter examines how and why business needs to be engaged in protecting human rights and considers the particular challenges to human rights stemming from supply chain production. The development and practices of the Fair Labour Association (FLA) is used as an example of principled engagement by business in the field of human rights. However this is not a story with just one principal actor. The particular path of engagement pursued by the FLA (that is, being proactive rather than reactive and one where accountability and transparency are paramount) involves input from a variety of stakeholders including: government, business, worker representatives, non-government organisations (NGOs), consumers and workers. Business, while having a critical role to play in improving the human rights of workers in supply chain production is part of the solution but not the entire solution. A culture of cooperation and proactive engagement are both key elements of the engagement model adopted by the FLA and the glue which binds the disparate stakeholders together

in a common goal of reducing human rights violations by the corporate sector. Fifteen or twenty years ago, very few companies acknowledged any affirmative obligation to address workplace conditions in the factories of their foreign suppliers – factories they generally neither own nor operate – but this concept is now an anathema to some companies. For such companies, the question is no longer "do we have an obligation to address workers' rights in suppliers' factories," it is "how do we do it, at what cost, and with whom do we collaborate in addressing the problems that exist?"[1]

Why Business Needs to be Principally Engaged in Protecting Human Rights

An important aspect of the evolution of the global economic system has been the increased reliance by companies, transnational companies (TNCs) in particular, on a global supply chain. This reliance is especially obvious in low-wage, labour intensive industries like apparel and footwear. But it also applies to the manufacturing sector generally including for example, the car, airline and electronic sectors. In today's global economy, large companies in most industries have come to rely on a series of contractors and suppliers in a range of countries to produce their products. And "in a world of 80,000 transnational corporations, ten times as many subsidiaries and countless national firms, many of which are small-and-medium sized enterprises," any attempt to "regulate" corporate behaviour will always be a challenge.[2] To some extent aspects of transnational business has always been, and is increasingly, being conducted in "rights free zones." This has become progressively more complicated given the decentralized supply chains that produce so many of today's consumer goods. Operating in such an environment, one might argue, places a least an onus, if not a legal obligation, on business to ensure that it does not violate human rights when operating in those zones. Business always has an impact but the willingness of a company to engage in a principled manner with human rights issues will more likely ensure the impact is a positive one rather than negative experience. The question remains as to how best this is achieved and with whom business should collaborate in order to achieve it?

Just as the range of business activity is broad, so too is their potential impact on human rights. Corporations play a fundamental role in domestic and international economies and both the presence and the absence of business can impact human rights both positively and negatively. Through commercial activity driven by corporations, jobs and wages are made available, goods and services are provided and taxes are paid, enabling governments to

1. Testimony of Michael Posner President, Human Rights First before the U.S. Congressional Human Rights Caucus "Human Rights And Brand Accountability: How Multinationals Can Promote Labor Rights," Wednesday, February 8, 2006.

2. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie "Business and Human Rights: Further steps toward the operationalization of the 'protect, respect and remedy' framework," 9 April, 2010, A/HRC/14/27, para. 82.

provide further goods and services. Thereby, directly or indirectly, a vast array of human rights may be supported – from rights to work, welfare, food and shelter, health and education, and freedoms to speech, association, movement. In short, not only are corporations central to the provision of many of the things that make human life more tolerable, enjoyable and fulfilling, the work and wages that corporate enterprise brings to all communities are key elements to the establishment and maintenance of individual human dignity to which end human rights strive to meet.

However, the influence of corporations on human rights is not all benign. Corporations, both local and multinational, have been and continue to be minor and major abusers of human rights. Some corporations are guilty of treating workers badly – in terms of pay, conditions and working environments; some pollute the environment in ways that have dramatic and serious effects far beyond their immediate surroundings; some discriminate against indigenous peoples, or certain ethnic or religious groups, or against women, or people with disabilities, or on grounds of sexuality; and some work alongside (or inside) governments that perpetrate gross human rights abuses.

Different Models of Engagement

The UN Special Representative on business and human rights, Professor Ruggie, has repeatedly stated that there is no "silver bullet" that will provide a systemic solution to reducing the incidence of business-related human rights abuses[1] and for much of the past few decades a plethora of tactics have been adopted in attempts to regulate or at least reduce the negative impact business can have on human rights with varying levels of success.

The engagement of business with human rights was thrust upon some companies earlier than others, with some adopting a proactive approach while others remaining essentially reactive. The Body Shop has long promoted itself as much more than just a beauty company. More than thirty years ago the Body Shop pioneered its simple idea that businesses have the power to do good, and has continued to very visibly promote human rights as one of its essential platforms for doing business. In 1996, when the US television network CBS' *48 Hours* program broke news alleging sweatshop conditions in Nike's contracted factories in Vietnam the company's first reaction was to deflect and resist any attempts to hold it directly responsible for conditions in a factory that it did not own and for workers that were not direct employees of Nike.[2] However, the publicity backlash that ensued and a lively debate within the company as to its ongoing role with respect to its contracted factories worldwide, soon

1. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie 'Business and human rights: mapping international standards of responsibility and accountability for corporate acts,' A/HRC/4/35, 19 February, 2007, para. 88.
2. CBS News, 48 Hours, 1996.

ensured Nike's acceptance of a broader and proactive approach to protecting human rights than might otherwise flow from strict legal liability.

Developments since the 1970s have seen a variety of attempts to "regulate" the impact of business on human rights – whether it was via voluntary international, national or company or industry specific guidelines, declarations or codes of conduct or via the threat of lawsuits or public reporting requirements, to name just a few. While each of these mechanisms engages business at some level in "solving" the problem, that is improving human rights protection, the models of engagement are very different with some adopting a punitive approach that do very little to comprehensively engage business in human rights but nevertheless may still be effective in changing future behaviour. The threat of litigation or increased legislative regulation is confrontational, reactive and generally focused on a narrow set of human rights violations. Such mechanisms tend to view business as part of the problem to be solved rather than engaging business as part of the solution.

In the last 15 years or so, the development and reliance on "soft law" instruments, such as codes of conduct that guide corporate behavior but not necessarily legally bind corporations, has increased. Codes are widely used in supply chain production as a mechanism for achieving corporate compliance with human rights standards. All codes, to varying extent, rely on corporate engagement but both the credibility and the potential longevity of the code are dependent on how business engages with other stakeholders in the development and enforcement of such codes. Three different modes of such guidelines have developed in parallel each envisaging a quite different role for how companies might engage in human rights. At the macro level, the United Nations Global Compact is an example of an attempt to produce a broad but brief, universally applicable code of conduct for all corporations operating in all industries in all countries. The Global Compact is the epitome of a non confrontational approach to engaging corporations in human rights issues, with business being asked by the United Nations (UN) to "embrace and respect" human rights. While other stakeholders, such as civil society are involved to a nominal extent in the process, the mode of engagement is largely that of one conglomerate to another – business to the UN and vice versa.[1] At the micro level at the other end of the spectrum, a growing number of corporations now have their own voluntary codes that may have been developed in-house with little or no involvement from external stakeholders such as NGOs, trade unions, consumers or workers.

1. Other examples with different approaches to enforcement are the OECD Guidelines on Multinational Enterprises and the United Nations' (UN) Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights ('UN Norms'). See, Organisation for Economic Co-Operation and Development ('OECD'), *Organisation for Economic Co-Operation and Development Guidelines For Multinational Enterprises* (2000) (http://www.oecd.org/dataoecd/56/36/1922428.pdf) and the *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, United Nations Sub-Commission on the Promotion and Protection of Human Rights Res 2003/16, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003).

In between and now what seems the choice *de jure* for a large number of companies are the thematic or sector-specific codes that have been developed particularly in industries with poor social or environmental track records, such as the extractive industries and the clothing, footwear and toy industries. Such codes, which are increasingly likely to originate from a multi-stakeholder forum, are seen as a way of tailoring the codes beyond what is possible in the one-size-fits-all approach of initiatives such as the Global Compact, while endeavouring to achieve a degree of consensus, consistency and credibility that is often lacking in single enterprise corporate driven codes. The multi-stakeholder basis for developing such codes (for example, which stakeholders were involved) and the monitoring and reporting and public verification systems attached to these codes, are two crucial indicators of their long term sustainability and effectiveness. The FLA is one example of how business can be principally engaged in human rights protection.

The concept of "principled engagement" as exemplified by the FLA in the case study below, delineates a 'third way' of protecting human rights. Principled engagement in this context is delineated by several factors. Firstly, it is generally reliant on non-adversarial means of advancing rights protection. It emphasizes negotiation over confrontation. Secondly, it focuses on engaging those directly responsible for the human rights situation. In the context of supply chain production, the question of who bears direct responsibility for rights violations is a complex one. Does responsibility for reducing corporate violations lie with the domestic government (where the production occurs), with the foreign government (where the corporation is headquartered), and/or with the brand who ultimately sells the product or its agents, suppliers and distributors who are integral to the supply chain? Within this complex web with varying levels of "responsibility" for improving the working conditions are the workers themselves, their representatives, NGOs and the consumers of the product. The model of principled engagement as demonstrated by the FLA case study is also aimed at improving the practical framework for human rights protection and while initially focused on an audit based policing model, has more recently transformed into a partnership model that attempts to involve all of these disparate stakeholders.

The reason that codes and initiatives, such as the FLA, have developed in such numbers in the past two decades is that there remains very few legal obligations dealing with human rights that bind corporations operating trans-nationally. This lack of clear legal liability has been central to the creation of the permissive international "human rights free" environment[1] in which some corporations seem to now operate and the parallel increase in the development of soft law mechanisms to "regulate" corporate behaviour. What is more, those few obligations that do exist are very limited in scope and are in fact merely domestic laws that

1. De Schutter, O.: 2006, *Extraterritorial Jurisdiction as a Tool for Improving the Human Rights Accountability of Transnational Corporations.*

happen to have extra-territorial (that is, international) application. The traditional vision of both labour law and international human rights law is that it focuses on and binds only States, as States have long been viewed as the principal protagonists in human rights abuses. This focus on States as the bearers of human rights responsibilities has meant that TNCs have been able to operate largely in a legal vacuum, devoid of obligations at the international level. International law – whether it be labour laws developed by the International Labour Organisation (ILO) or human rights law developed within the UN do not directly recognise the corporate form as one giving rise to rights and responsibilities. The ILO, because of its tripartite structure involving governments, employers and worker representatives, has long taken a more proactive approach to engaging business as part of its "solution" in reducing violations of workers' rights. The UN, however, has been much slower to adopt an approach of engagement and it was not until the launch of the Global Compact in 2000 and more recently the appointment of Professor Ruggie as the UN's Special Representative on the issue of transnational corporations and human rights in 2005[1] that business is now seen by the UN as a significant player that should be fully embraced and engaged in the business of human rights.[2]

Over recent decades, a variety of soft law instruments have variously attempted to fill or at least partially block this legal lacuna. The use of soft law may be more attractive to business and governments alike because it may sometimes simply contain inspirational goals and aspirations that aim for the best possible scenario with few constraints if such goals are not met. However, soft law can serve as a testing ground for the development of new mechanisms of accountability and also function as a useful and necessary tool for the development of ensuing hard law that legally binds parties to their commitments. It should be noted, though, that characterising soft law as non-binding is accurate only in the strict legal sense. Soft law and the codes developed by organizations such as the FLA, reflect varying norms and societal expectations concerning corporations and their responsibilities; while a company may choose to ignore these standards, doing so may impact on the company's social license to operate. For this reason, a significant, if still small, proportion of corporations are engaging in human rights and increasingly adopting a consequentialist approach to human rights issues which recognises that moral liability can have an impact equal to that of legal

1. United Nations, *Secretary-General Appoints John Ruggie of United States Special Representative on Issue of Human Rights,Transnational Corporations, Other Business Enterprises* (28 July, 2005, United Nations Doc. SGA/A/934), http://www.un.org/News/Press/docs/2005/sga934.doc.htm.

2. It should be noted that the UN has been grappling with the conundrum for some decades of how to best engage business in the business of human rights and one of its earlier attempts was in the 1970s. The Centre on Transnational Corporations was established by the United Nations in 1975, and by 1977 it was coordinating negotiation of a voluntary Draft Code of Conduct on Transnational Corporations. However, no final agreement was concluded. See Blendell J, Barricades and Boardrooms: A Contemporary History of the Corporate Accountability Movement (Paper No. 13, United Nations Research Institute for Social Development Programme on Technology, Business and Society (2004) 11).

liability but such moral liability will vary widely depending on the particular code of conduct to which the company adheres and the level of enforcement and transparency that is attached to such a code.

As an alternative approach, the "business as usual" model contrasts the path of principled engagement by opting to downplay or simply ignore the relevant human rights issues. This approach is market driven and keen to isolate business from a human rights framework. With hundreds of thousands of companies operating around the world and only about 5,300 signed up to the UN's Global Compact, it would seem there are no shortage of examples of companies adopting this approach. Many companies and indeed business lobby groups remain stuck in the era of denial, questioning if companies should be involved in human rights issues, rather than how. Indeed, in 2003 when the crescendo around the UN Norms was reaching fever pitch, the International Organization of Employers and International Chamber of Commerce were highly visible lobbyists campaigning specifically against the UN Norms but more generally against regulation and one might argue, even engagement on human rights more broadly.[1]

Ostracism is another alternative technique sometimes employed in rights protection. Boycott campaigns which emphasize ostracizing a particular company or its products have long been used in the human rights world as a mechanism to correct a specific wrong and are essentially the polar opposite of the engagement model adopted by the FLA. The potential positive and negative impacts of boycott campaigns on rights protection is a keenly debated topic. The Nestlé boycott launched in the late 1970s, against the Swiss based Nestlé corporation was prompted by concern about the company's marketing of breast milk substitutes (infant formula), particularly in less economically developed countries. While the initial campaign focused on boycotting the company's products, at various times over the years, it has morphed into a engagement model whereby a variety of disparate stakeholder sought to influence the company's behaviour particularly via the adoption of a code of conduct. By 1981, after a series of protracted negations and with the backdrop of a continuing boycott campaign, the World Health Assembly adopted Resolution WHA34.22 which includes the voluntary International Code of Marketing of Breast-milk Substitutes (which aims to restrict the marketing of breast milk substitutes). With many countries subsequently converting the Code or elements of it into national legislation, this campaign would appear at first to be a wildly successful example of the power of ostracism. However, recent

1. International Organisation of Employers and International Chamber Of Commerce ('IOE and ICC'), *Joint Views of the IOE and ICC on the Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (2003), http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/918bbd410b5a8d2cc1256d78002a535a?Opendocument.

evidence[1] suggests that failure to abide by the provisions of the Code is still a significant cause for concern and in one form or another, the boycott campaign continues as do discussions as to the effectiveness of the boycott model as a means of improving human rights.

Securing the engagement of business in human rights issues is not a fool proof method for obtaining success, nor is it a straightforward process. What it does aim to do and with which the FLA has achieved some limited success is to provide business with a viable mechanism for responding to the structural and governance gaps that exist in the marketplace in respect of human rights protection. For such engagement to be effective it must be based on a partnership that involves a variety of stakeholders who all have a keen and mutual interest in ensuring long term sustainable success in reducing human rights violations. The fact that such a process is likely to be incremental (accepting that achieving something, even if not perfect, is preferable to achieving nothing) and may involve prioritising (or some might argue compromising) some rights over others are valid limitations and criticism of the process, but not necessarily fatal flaws. For some the FLA is a legitimate and necessary embodiment of the 'third way' of engaging with business in respecting and protecting human rights while for others it is viewed as having conferred legitimacy on business that is unwarranted and unwelcome, it rewards continuing bad corporate behavior and ultimately makes little difference. Faced with such a dichotomy, a closer examination of the FLA is warranted.

Case Study: the Development of the Fair Labor Association (FLA)

The FLA emerged as a response to the perfect regulatory storm generated by the decline of the three tiers of labour market regulation – ILO Conventions, national labour laws and labour relations systems. Traditionally, the ILO adopted Conventions, member states incorporated those into their labour law and enforced them, and trade unions and employers struck bargains over their application at enterprise or sectoral level. The growth of global supply chains over the last forty years however has created a rights-free zone that is responsible for increasing amounts of world trade and in which labour inspectors are conspicuous by their absence and representative trade unions are a rare exception.

These global supply chains were first developed to reduce the costs of labour-intensive production processes such as clothing and footwear, but they continue to expand as more products and services – from computer chips to medical research – seek lower-cost production platforms. This has been accompanied by the development of a global labour market that has outstripped the traditional forms of labour market regulation. Global supply

1. Tony Waterston and James Tumwine 'Monitoring the marketing of infant formula feeds: Manufacturers of breast milk substitutes violate the WHO code – again,' *BMJ*. 2003, 326113-114.

chains stretch across multiple jurisdictions but are effectively regulated by none. Consider for example a typical scenario whereby an American brand places an order with an agent in Hong Kong, who contracts a Korean supplier in Seoul, who allocates it to their facility in Bangladesh. Once produced, the goods are delivered directly to the retailer in Europe. Neither the brand, nor the agent nor the retailer has an employment relationship with the workers and they are often unaware of the terms and conditions of employment at the production facility. They assume that the Korean investor takes care of all legal obligations, including social, labour and environmental requirements. That is not an assumption one can make. The Bangladeshi labour administration (like many others) is under-resourced and unable to enforce the labour laws. To complicate matters further, the Export Processing Zones (EPZs) are exempted from the industrial relations ordinance that should protect workers' rights. Finally, poverty pushes large numbers of young, rural women onto the labour market where they are forced to accept whatever they can get, often at terms and conditions that violate the buyer's codes of conduct and Bangladeshi labour law.

These global supply chains are also inherently unstable. The supplier has neither assurance of future orders nor the workers of employment, and this insecurity further undermines the full enjoyment of rights at work. Workers and employers often refrain from contributing to social security schemes or joining trade unions or employers' associations because they do not have a long term view of their employment relationship.

This lack of regulation, combined with the vagaries of global competition, predictably led to frequent abuses of human and labour rights. In response, civil society organizations used the only weapon they had, namely information, to expose abuses of labour rights and embarrass the brand-name buyers involved. In the early 1990s reports of child labour in the Bangladeshi export garment industry shocked consumers in the west, as did revelations of bonded child labour in the manufacture of carpets in India.[1] Major brand-name companies such as Nike and GAP faced exposes of working conditions in supplier facilities in Asia and Central America. At that time the standard response of companies confronted with such information was to emphasize that they did not own the factory, were not the employer and had no legal liability for the rights or working conditions of the workers concerned. Given the risk of reputational damage however, brands (whose most valuable asset was often their image) were forced to react to exposes.

Those reactions however were individual, selective and ad hoc and so in 1996 President Clinton convened a meeting at the White House of leading brands, trade unions, human and labour rights NGOs and the Department of Labor. He urged them to find a way of preventing labour rights abuses in global supply chains, regardless of whether they owned the factory

1. See for example the history and current work of Rugmark: http://www.rugmark.net/.

or had strict legal liability. They formed a White House Task Force known as the Apparel Industry Partnership and set about negotiating a system to protect rights in global supply chains. They were soon joined by a group of US colleges and universities who were equally concerned about the working conditions at factories making logo-ed product for sale on campuses. The Apparel Industry Partnership took three years to develop a methodology which involved the companies adopting a code of conduct[1] (based on international labour standards) and attaching the code to their contracts with suppliers. This would establish a floor of standards for production worldwide, the so-called level playing field. The system required the buyers to conduct internal audits of suppliers to ensure that the code was being applied and to agree to external audits to verify the integrity of the system.

The Fair Labor Association was set up to conduct those external audits. FLA-affiliated companies submit their supplier lists to the staff that draws a risk-weighted random sample for unannounced external audits. The FLA-affiliated companies are obliged to remedy any non-compliance issues identified in internal or external audits and the results are finally published on the FLA website. In effect, this system of internal and external labour audits mirrors that of the financial audit system, but it is more robust in that the company does not choose the external auditors or know when they will appear at the factory gate. It is also arguably more muscular than government labour inspection because supplier non-compliance with the code can lead to cancelation of the contract, an outcome that would be far more costly to the supplier than the fine a labour inspector could levy. The Fair Labor Association works in over 30 countries and the levels of labour administration have declined noticeably over the last decade, and not only in failing and failed states.

The Limitations and Potential of the Model of Principled Engagement

The FLA is only one of a series of corporate social responsibility initiatives that emerged in the 1990s[2], but it is unique that it is that only system that provides for unannounced factory audits with transparent results. This is a crucial difference in that affiliated companies know that they cannot simply "walk the walk" because the unannounced audits will likely expose their lack of real action. Similarly, they have a strong incentive to remedy non-compliance findings because the results are published and the public is able to see the efforts that companies have made to redress the situations uncovered by the auditors. If one considers that in 2008, for example, FLA-affiliated companies, and the FLA itself, conducted some

1. The Workplace Code of Conduct can be accessed at: http://www.fairlabor.org/about_us_code_conduct_e1.html; Internal and external auditors use a set of benchmarks to test code compliance. The Benchmarks can be found at: http://www.fairlabor.org/images/WhatWeDo/compliance_benchmarks.pdf.

2. Others include Social Accountability International, the Ethical Trading Initiative and the Fair Wear Foundation, all of which are multi-stakeholders, and the Worldwide Responsible Apparel Production (WRAP) which is an industry grouping.

10,000 factory monitoring visits, uncovering about 100,000 non-compliance issues, one gets an idea of the magnitude (and significance) of the commitment. All the subsequent attempts to regulate supply chains or hold companies accountable have failed to agree on the need for external audits with transparent results. This shortcoming has arguably made them less effective and credible.[1]

Companies that join the FLA are therefore agreeing to help regulate unregulated jurisdictions. They install rights in workplaces that would otherwise not enjoy them. To date some 30 major buyers have brought entire product categories into the FLA system. Another 1,000-odd companies who supply the FLA's 210 college and university members have submitted their licensed production to FLA scrutiny. So is this a new form of labour regulation? Are these private actors going to have to deliver public goods such as labour inspection from now on? The FLA is particularly strong in the sporting goods sector with adidas, asics, New Balance, Nike, Puma and Umbro all participating but it also has a growing presence in sectors as diverse as agriculture, gifts and paper.

Some commentators argue that it is illegitimate for private companies to be conducting labour inspections and that resources should rather be devoted to strengthening public labour administration systems. It is the responsibility of the State to protect rights, they say, and this cannot and should not be usurped by private actors. The only legitimate and sustainable solution, the argument goes, is to strengthen the capacity of the State to play its proper role. Unfortunately, years of ILO technical assistance to countries around the world has not been able to stem the decline of labour inspection and the global labour market has quite simply overwhelmed most national systems of labour market regulation. Even developed market economies have trouble maintaining adequate levels of inspection.[2] So the need for private actors to take responsibility for labour inspection remains and it will probably grow. No socially responsible company would want child labour or forced labour or toxic conditions of work involved in the production of their goods, so the need to perform due diligence to ensure that labour standards are respected, even in jurisdictions where labour inspectors are active is often a necessity.[3]

Perhaps the ideal situation would be one in which private actors complimented the work of public agencies by mobilizing resources to protect social, labour and environmental rights?

1. See for example the Electronic Industry Citizenship Coalition (EICC); Business Social Compliance Initiative (BSCI); Global Social Compliance Programme (GSCP).

2. Lance Compa *Unfair Advantage: Workers Freedom of Association in the United States under International Human Rights Standards*, Cornell University Press (2004). Also Human Rights Watch *Blood, Sweat, and Fear: Workers' Rights in U.S. Meat and Poultry Plants* (2005).

3. See also the emphasis placed on due diligence to mitigate risk by the UN Special Representative, Professor Ruggie. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie "Business and Human Rights: Further steps toward the operationalization of the 'protect, respect and remedy' framework," 9 April 2010, A/HRC/14/27, paras. 7-86.

If the private and public actors cooperated and coordinated it may be possible to weave social safety nets in countries which have never had them before. That synergy has been hard to capture however and most public agencies are either in denial or in bad faith about the lamentable state of labour law enforcement in their jurisdictions. This has certainly stymied ILO action on the topic since no member state wants to admit in public that its labour laws are not being enforced and that it requires assistance from international organizations or private corporations. This effectively means that the most concerted action to enforce labour law and international standards in factories around the world is that undertaken by FLA-affiliated companies, particularly when they cooperate with local stakeholders. The FLA is increasingly consulting with local stakeholders to identify priority issues and working with them on agreed-upon remedial strategies. Those strategies are developmental, rather than punitive, and the compliance audit is being replaced by needs assessments and gap analyses followed by capacity building.[1]

So does it work? The FLA staff has analyzed the audit results every year since they started external auditing in 2002 and concluded that while audits are reasonably effective in identifying violations they are less so in effecting lasting change. The number of violations (an average of 17 per factory), and the issues, have remained stubbornly high, despite thousands of audits and remedial programmes. Why? One of the reasons is that the system was developed and implemented in a top-down manner. The White House initiative brought together the US parties concerned and they took the unilateral decision to add code standards to their contracts. Suppliers around the world, confronted with those new and exacting requirements found that it was frankly easier to cheat than to comply. This is a classic reaction to regulation efforts which raise the bar too high, too fast. In retrospect the introduction of the new system was not accompanied by sufficient dialogue along the global supply chain to ensure good faith cooperation from suppliers. This was at least in part a function of the fact that the Apparel Industry Partnership was reacting to a series of labour rights crises around the world. If the initiative had been more proactive it would probably have been more consultative in nature. The result is that code of conduct audits have provoked a veritable industry of falsified wage and hour records as suppliers attempt to "comply" with code standards. Newspapers in south China for example, carry advertisements by consultants offering to game audits and by software providers offering programmes that fake wage and hour records. Social auditors have become adept at exposing fake records but this cat-and-mouse game has not gotten them off the treadmill and the overall levels of compliance remain largely unchanged. This does not mean to say that a lot of improvements have not been made; nor does it detract from the hundreds of thousands of wrongs that have

1. For more information on this approach see the FLA 3.0 tab on the website www.fairlabor.org.

been righted as a result of audits, but overall the code of conduct audits are not changing the culture of non-compliance that reigns in many exporting countries.

The FLA has therefore shifted its emphasis from policing to partnership and a more nuanced form of principled engagement. Suppliers have been invited to join so that they become part of the solution rather than simply "the problem" and local stakeholders have been included in the definition of issues and responses rather than being left with no option but to name and shame. Sustainable compliance is now pursued through capacity building rather than coercion. The top-down enforcement of standards has been replaced by a joint venture between buyers, suppliers, the FLA and local stakeholders and service providers to equip factories with the systems and expertise that they need to be compliant. That capacity building involves not only management and supervisory staff but also workers who are empowered to understand their rights and provided with channels and guarantees that allow them to exercise those rights. The FLA acts as the facilitator and enabler of the collaboration between buyers and suppliers, providing a "safe space" within which they can engage on a principled basis to address common concerns. The FLA also provides the technical inputs and services necessary for them to make practical progress on those issues.

The FLA therefore engages in very practical terms with a range of interested parties in the supply chain. That engagement is rights-based in that the companies' voluntarily commit to the code principles, but it goes beyond that in two important respects. The companies who join voluntarily sign a contract with the FLA in which they agree to the performance requirements of the FLA Charter, and they repeat those requirements in their contracts with suppliers. This contract is renewed annually. The engagement is thus set down in great detail in written form, reducing the risk of white-washing or co-optation. Secondly, the engagement is transparent. This provides an even stronger guarantee of performance than the written contract in that ultimately it is the court of public opinion that holds sway in determining company behavior. In return the FLA provides important services. Its verification audits and company accreditation attest to the integrity of the company compliance efforts and its capacity building services provide much needed support to the social responsibility programmes of the supply chain actors. These mechanisms for accountability which FLA companies assume, lay the framework for a principled model for engaging companies in the business of human rights.

Two recent examples of principled engagement by the FLA and its members and stakeholders are illustrative of the practical embodiment of this approach. In 2009 the FLA convened two multi-stakeholder forums in China to discuss socially responsible retrenchment in the wake of the financial crisis. Consumer demand had collapsed and factories were closing or down-sizing on a wholesale basis, often violating workers rights in the process. The FLA brought together government agencies, buyers, suppliers and trade union

representatives to discuss how to handle the inevitable retrenchments in a manner consistent with the code of conduct and the law. Similarly, when Nike was confronted by Australian news channel Channel Seven in 2008 with allegations of abuse of foreign migrant workers at a supplier facility in Malaysia[1], the FLA commissioned a report on the employment of foreign migrants and organized a multi-stakeholder forum to seek consensus on practical solutions to the most common abuses of workers' rights. These initiatives provided "safe spaces" in which the stakeholders could meet and seek practical solutions to complex issues of code compliance. There was plenty of ostracism flowing from the media and labour rights groups but the parties concerned, particularly buyers and suppliers, needed a trusted third party to convene and moderate the discussions and to contribute practical proposals for action.

Not everyone agrees that these forms of engagement are principled, appropriate or effective. The FLA is both a facilitator of principled engagement, and by virtue of its corporate membership, itself a principledly engaged actor. For some however, the role assumed by the FLA is little more than colluding with the "enemy" with few tangible benefits. The United Students Against Sweatshops, for example, argues that the FLA cannot perform due diligence on companies in an independent manner because those companies are often members of the FLA and their dues are a large part of the FLA's budget and as such the partnership is not set on equal footing.[2] Others argue that "social auditing" is no more than a fig leaf for buyers who are not serious about changing conditions in their supply chains because their very motivation in going off-shore was to find unregulated jurisdictions in which standards and costs were lower.[3] Moreover, the arguments go, any change in corporate behaviour is incremental at best and at worst simply a form of corporate "greenwashing" (or "bluewashing" if such corporate responsibility attempts include the UN as a stakeholder). In this context, does the FLA therefore represent a flawed form of principled engagement or worse, a sophisticated form of "business as usual"?

The first allegation (of a conflict of interest) was carefully considered in the design of the FLA system. The Board of Directors has six company, six university and six NGO seats with an independent chair, and there is a super-majority voting system that prevents any one constituency from dominating. In addition, the audits are arranged by the FLA staff, are unannounced and transparent. A cursory glance at the results will show that the findings are substantial and often involve egregious code violations, something that companies would only accept if they were serious about making improvements (as distinct from seeking

1. The report can be viewed at: http://www.youtube.com/watch?v=e9ZktmrGGMU.

2. http://flawatch.usas.org/about/

3. "The basic underlying supply chain model of jumping from factory to factory, of pushing prices down, is simply incompatible with a reasonable level of worker rights," Scott Nova quoted in Inside Higher Education. http://www.workersrights.org/press/InsideHigherEd_Sept-28-06_CodesDontWork.pdf.

"cover").

Similarly, companies who are going off-shore in search of unregulated environments would presumably not join an initiative like the FLA which is attempting to "re-regulate" those jurisdictions. Why engage in private regulation with multi-stakeholder oversight if your real intention is to escape regulation? There are no doubt companies using corporate social responsibility and social auditing as a form of 'greenwash' but they are generally outside of multi-stakeholder initiatives and such companies certainly could not live with the independent auditing and transparency requirements of the FLA. The danger in the FLA's approach to principled engagement is not that it is placing the bar too low but rather that its monitoring, auditing and transparency requirements are too stringent. Relatively few companies are willing to agree to unannounced and transparent independent audits and this challenges the FLA's attempts to reach critical mass in key sectors like apparel. Put simply, if the approach is too "principled," there may be very little engagement from the corporate sector.

In some ways the ostracism employed by labour rights groups and the media supports the engagement activities of the FLA in that it forces companies to look for responses to the situations ostracized. Most of the companies affiliated to the FLA had been through periods of ostracism before they joined. Mere affiliation of course does not prevent future bouts of ostracism but the FLA programme does provide a basis for responding to, and engaging with, critics. Many of the groups employing name-and-shame tactics are in communication with the FLA on specific cases and some have made use of the FLA Third Party Complaints mechanism to advance cases. The Maquila Solidarity Network (MSN) has taken that a step further and joined the Board of the FLA, campaigning against companies outside, and engaging with them inside, the FLA. In the recent case of Russell Athletic, campaign groups (including MSN) were highly successful in ostracizing the company, resulting in the loss of some 60 university licenses.[1] At the same time the FLA conducted audits and investigations that led the Board to finally place Russell Athletic on "Special Review" with a list of corrective actions which, if not fulfilled in time, could have resulted in the company being expelled from the FLA. The actions taken by the campaign groups and the FLA differed markedly in tone and tactics and even on the facts but tracked each other on the principles involved. The company finally changed tack and met all of the demands, including trade union recognition, access and collective bargaining. Given that the company and the union are now bound together by agreements it is interesting to note that the union at least, and probably some of the campaign groups, are also in a form of principled engagement with the company they formerly ostracized.

One of the toughest challenges facing those companies, who do choose to undertake some

1. See http://en.maquilasolidarity.org/node/911.

engagement mechanism as a means of protecting rights, is proving to be market economics. Global supply chains are characterized by relentless pressures on prices and lead-times and some buyers have contradictory approaches – constant price cutting on the one hand and code of conduct auditing on the other. Price competition is of course fundamental to the market economy and does not necessarily lead to declining labour standards, but in global supply chains this is often the case. In developed market economies companies respond to price competition through innovation and efficiency gains but suppliers in developing countries often lack the management resources to do so. Given that the suppliers rent and utility costs are generally inflexible workers wages and working conditions are often the adjustment variable when prices fall or costs increase. In a free market this should not be the buyers problem, but the power differentials in global supply chains (between buyers and suppliers and suppliers and their workers) are so great that buyers should perform due diligence to ensure that the price they negotiate is sufficient to pay workers wages and benefits.

This risk – of competitive pressures undermining labour standards – has to be approached with considerable caution. Any grouping that sits down to discuss prices runs the risk of contravening anti-trust or competition rules and so the discussions need to be carefully organized and conducted. Secondly, the buyers and the suppliers have conflicting commercial interests and confidentiality is a major concern. Thirdly, it is well nigh impossible for either party to escape their competitive environment and they have very little room to maneuver when it comes to prices. It is therefore hard to see how anything other than engagement in a "safe space" could get companies to adopt more consistent sourcing and CSR practices. The FLA provides the brokerage and the assurances necessary to get them to engage, and if they do agree to come to the table, the technical inputs required to realize the adaptive measures to cope with commercial pressures. That engagement is not only technical however. The FLA is not a business development agency. Its interactions with buyers, suppliers and other stakeholders are always on the basis of the standards contained in the code of conduct. However, experience has shown that the achievement and maintenance of acceptable levels of compliance depends on having good management policies, procedures, trained staff, communication and worker involvement. The FLA provides technical assistance in those areas, but always as part of a clear strategy to achieve better outcomes in terms of code standards.

So What Are the Factors that Make Principled Engagement Work in the FLA Case?

Chronologically, it helped to be convened by government. The fact that President Clinton brought the parties together at the start and stood behind the process until it bore fruit in the form of the FLA provided a very important moral imperative. It was probably equally important that government then withdrew and let the newly formed not for profit

company (the FLA) gets on with the job. This has allowed the FLA to be more agile and creative than it could have been had government remained at the table. It has also allowed the FLA to operate in exporting countries without being challenged as an agent of the United States' foreign or trade policy. Secondly, consumer pressure provided a second moral imperative. Companies could not ignore or reject the consumer expectations that they "do the right thing." Thirdly, the risks associated with doing business in many badly regulated jurisdictions provide what might be called the supply chain imperative. This sometimes takes a legalistic form that strips the meaning from a "rights-based" approach, but it nonetheless provides a basis of standards (the code of conduct) that supply chain actors can rely on. Fourthly, a very robust framework of performance obligations provides a floor and walls or boundaries, within which the staff and participants work. The significance of the transparency requirements in this regard cannot be overstated. Fifthly, the steady flow of information about human and labour rights abuses in global supply chains that obliges companies to perform due diligence and undertake the delivery of what is essentially a state function, namely labour inspection. And finally, the existence of a growing number of civil society actors focusing on market or regulatory failure. These networks of NGOs constitute a new accountability mechanism. Particularly significant is the growth in the number of NGOs who want to be part of the solution and who are willing to engage with companies in the search for those solutions.

Conclusion

Reduced corporate violations of workers' rights is a process of progressive realisation and while a diverse range of initiatives, aimed at curbing violations of workers' rights have proliferated in recent decades, it is also clear that such initiatives "have been unable to stem the flow of human rights violations by TNCs."[1] This should not be taken as an indication that such measures are altogether devoid of merit. Initiatives that have relied on the development of soft law via such tools as codes of conduct can play a vital role in internalising human rights norms within corporations and solidifying the notion that corporations have duties with respect to shareholders *and* stakeholders (including workers in their supply chain) alike – a process that in time "can shape the standards of care that are legally expected of business."[2] This is especially so in respect of workers' rights, with corporate codes and reporting guidelines emphasising the importance of environmental and social impacts not only on employees but also on the community in which the company operates taking into account the

1. David Kinley and Rachel Chambers (2006), 'The UN Human Rights Norms for Corporations: The Private Implications of Public International Law,' *Human Rights Law Review*, 6 (3), 447-497, at 491.

2. International Institute for Environment and Development International Institute for Environment and Development (2003), 'Legal Issues in Corporate Citizenship,' p. iii.

workers in its global supply chain. However, not all codes or initiatives are alike and there remains a vast gulf of difference between the aspirations of some codes and initiatives and how they actually engage business in the process of reform. The FLA is one example of how corporations can be both *principally* and "*principledly*" engaged in the business of human rights.

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Reforms of UN Human Rights Agencies: Status Quo and Expectation

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In September 2005, the UN world summit adopted the *World Summit Outcome* (hereafter referred to as the Outcome) on UN reform, indicating the official initiation of a new round of comprehensive reform of the world body. Though not so smooth as expected so far, the reform with great fanfare is gaining some preliminary achievement. In recent years, the reform of the United Nations in human rights sector has made remarkable progress, such as the rise of position of the human rights work, new developments in human rights concept and achievements in human rights mechanism reforms. This article will mainly brief on the status quo of the UN human rights agencies reforms and related problems it faces.

I. Status Quo of the UN Human Rights Agencies Reforms

UN human rights agencies include two categories based on the Charter of the United Nations and international human rights treaties separately. The first category mainly consists of the organizations established according to the UN Charter and resolutions of major UN agencies such as UN Human Rights Council, UN High Commissioner for Human Rights and Office of the High Commissioner for Human Rights; the latter refers to the organizations established according to related human rights covenants in order to review and supervise the state parties' implementation of the covenants. In recent years, the reform related to UN human rights mechanisms mainly covers issues such as the establishment and improvement of UN Human Rights Council, strengthening of the Office of UN High Commissioner for Human Rights and integration of the UN human rights treaty bodies.

(I) Establishment and the Status Quo of the UN Human Rights Council

In March 2005, UN Secretary-General Kofi Annan made a report entitled "*In Larger Freedom: Towards Development, Security and Human Rights for All*" to the UN General Assembly, making official suggestion of establishing a human rights council. In September, the world summit at the 60th anniversary of the establishment of the United Nations adopted the Outcome, requiring the 60th UN General Assembly to establish a human rights council as soon as possible. On March 15, 2006, the 60th UN General Assembly overwhelmingly adopted the resolution, and the Human Rights Council was officially established.

According to related stipulations of the resolution, the UN General Assembly elected the first 47 state members of Human Rights Council in May 2007. The council's responsibility is to promote the respect and protection of human rights and basic freedom of all people around the globe indiscriminately and justly. Compared with its predecessor, the UN Commission on Human Rights, Human Rights Council is affiliated to the UN Assembly and its position is higher than that of Commission on Human Rights, which is under the UN Economic and Social Council. Hence, it is believed that the UN has raised the position of its human rights agency. In addition, the resolution also decided to review and evaluate Human Rights Council in various aspects within five years so as to determine whether its position should be further raised to be a major agency of the United Nations.

After its establishment, Human Rights Council has been playing an important role in the international human rights affairs through its regular and special session system and special human rights protection mechanisms. Here below are the details:

(1) Regular and Special Session System

By March 2010, Human Rights Council had held 13 official sessions, covering extensive topics, mainly from the essential issues related to human rights to the work procedures of Human Rights Council. Its work mainly included: providing special dialogue forums for human rights issues, reviewing the annual report of the Office of UN High Commissioner for Human Rights and regulation establishment of Human Rights Council.

In addition, according to UN General Assembly Resolution 60/251, Human Rights Council can hold a special session at the request of its members with the support of one third of its members (16 countries). So far, the Council has held 13 special sessions with topics covering the occupied land of Palestine, the human rights development in Darfur of Sudan and human rights issues involved in the world food, economic and financial crises.

(2) Universal Periodic Review

According to UN General Assembly Resolution 60/251, Human Rights Council should "undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States."

On September 21, 2007, the sixth session of Human Rights Council adopted an arrangement agenda of universal periodic review mechanism in the first four-year period for all the 192 UN member states. So far, the Council has reviewed the human rights situations in 112 countries. It held the eighth session on May 14, 2010 to review the human rights situations in 16 countries such as Kuwait, Spain and the United States. It is expected that the Council will complete its review of 192 countries in 2011.

(3) Special Procedures

"Special procedures" is the general name given to the mechanisms established by the

Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. The Office of the High Commissioner for Human Rights provides these mechanisms with personnel, policy, research and logistical support for the discharge of their mandates. Special procedures' mandates usually call on mandate holders to examine, monitor, advise and publicly report on human rights situations in specific countries or territories, known as country mandates, or on major phenomena of human rights violations worldwide, known as thematic mandates.

The mandates of the special procedures are established and defined by the resolution creating them. Various activities are undertaken by special procedures, including responding to individual complaints, conducting studies, providing advice on technical cooperation at country level, and engaging in general promotional activities. At present, the country mandates of the special procedures involve eight countries of Burundi, Cambodia, Haiti, Myanmar, occupied land of Palestine, Somali, Sudan and the Democratic Republic of Korea. It also has 31 thematic mandates, including proper housing, random detainment, kidnapping and trafficking children, children prostitution, children pornographic products, education right, forced or non-voluntary missing, extreme poverty, right to food, free expression and freedom in religion and belief.

(4) Complaint Procedure

According to the President text adopted at the fifth session of Human Rights Council, the Council established new complaint procedure on the basis of the 1,503 procedure of the Commission on Human Rights, and set up two working groups: the Working Group on Communications and the Working Group on Situations. The former is responsible for assessing the admissibility and the merits of a communication, including whether the communication alone or in combination with other communications, appears to reveal a consistent pattern of gross violations of human rights and fundamental freedoms; the Working Group on Situations, on the basis of the information and recommendations provided by the Working Group on Communications, presents the Council with a report on consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms and makes recommendations to the Council on the course of action to take. So far, there has been no related record of initiating the procedure.

In addition, Human Rights Council also established a Human Rights Council Advisory Committee to provide expertise under the guidance of Human Rights Council according to the required ways and forms at the request of Human Rights Council.

(II) Strengthening of the Office of High Commissioner for Human Rights of the United Nations

The UN Office of High Commissioner for Human Rights was founded according to the UN General Assembly Resolution 48/141 in 1993. The High Commissioner for Human

Rights, the principal human rights official of the United Nations of the under secretary-general level, is appointed by the UN Secretary General and approved by the UN General Assembly. As the high-level UN official, UN High Commissioner for Human Rights is mainly responsible for launching various human rights activities of the United Nations. With a term of four years, a High Commissioner of Human Rights undertakes many tasks, including: promoting and protecting all human beings to pragmatically enjoy all human rights, promoting international cooperation in human rights, encouraging and coordinating human rights activities inside the United Nations, assisting to formulate new human rights standards and promoting approval of human rights treaties. Meanwhile, the High Commissioner for Human Rights is also authorized to deal with serious infringement of human rights and adopt preventive activities and measures. The Office of High Commissioner for Human Rights is the coordination center for the United Nations to launch various human rights activities and is actually serving as the secretariat of the Human Rights Council, treaty-based bodies and other UN human rights bodies. In October 1997, the 52nd UN General Assembly adopted the plan of restructuring the UN human rights secretariat put forward by Annan and merged the former UN Human Rights Center into the Office of High Commissioner for Human Rights. Headquartered in Geneva, the Office is in charge of technical supports in human rights sector of the United Nations and has an office in United Nations Headquarters in New York. In September 2005, the world summit of the 60th anniversary of the establishment of the United Nations adopted the Outcome to strengthen the work of the Office of High Commissioner for Human Rights and decided to double its regular budget in the next five years.

So far, the Office of High Commissioner for Human Rights has established eight regional offices and 11 country offices, which are responsible for supervision, reports, technical supports and guiding and developing the long-term capacity of dealing with human rights affairs of corresponding countries.

(III) Integration of Supervision Bodies of Human Rights Treaties of the United Nations

The United Nations has eight supervision bodies of human rights supervision: Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination against Women, Committee against Torture, Committee on the Rights of the Child, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee for the Convention on the Rights of Persons with Disabilities. Every committee consists of qualified independent experts in human rights areas (10-25 experts) nominated and elected by state parties. With a term of four years, these experts can be reelected and reappointed. Usually, Human Rights Committee holds a conference in New York in March every year and other treaty departments usually have meetings in the UN Office at Geneva. All the treaty-based bodies are supported and

assisted by the treaty and committee division of the Office of High Commissioner for Human Rights, except for Committee on the Elimination of Discrimination against Women, which is supported by Division of the Advancement of Women in New York. The eight committees are usually known as the "system of human rights treaty-based bodies of the United Nations."

These treaty-based bodies supervise state parties to abide by and implement human rights treaties through implementing a series of functions. All the treaty-based bodies are authorized to receive and review the reports submitted regularly by state parties (namely, the treaty implementation reports), and can formulate some rules to assist various countries to draft reports, create general comments, interpret clauses of treaties and organize discussions on special topics related to treaties. Each treaty is an independent legal document that various countries can choose to accept or decline. In addition, each treaty-based body is an expert panel independent to other committees. In this sense, the level of various treaties and treaty-based bodies as a system to play the roles mainly relies on the level of various countries to accept all the core international human rights and implement them, and the effectiveness level of various treaty-based bodies to adopt consistent measures to coordinate their activities so as to supervise human rights implementation in the state level.

We should admit that the current human rights treaties and human rights mechanisms and processes are huge and complicated. With the increasingly complicated human rights mechanisms, the burdens of submitting reports are also increasing, occupying the resources of member states and secretariat. The United Nations setups has long been discussing the ways of strengthening the roles of human rights supervision bodies so as to most effectively reach the goal of protecting human rights through implementing human rights treaties on the state level. In 1984, the first joint conference of directors of UN human rights treaty-based bodies was held; the joint conference has been held on a yearly basis since after 1994. Starting mid-1980s to 1997, UN Secretary General specially nominated an independent expert to research the ways of strengthening long-lasting effectiveness of UN human rights treaty-based bodies of the United Nations. The independent expert submitted three reports in succession, specially suggesting establishing a singular supervision department for all the treaties. In 2002, UN Secretary General delivered a report entitled *Strengthening of the United Nations: an Agenda for Further Change*, suggesting various UN human rights bodies adopt consistent and coordinative measures in launching activities and standardize different report requirements. Meanwhile, various state parties should be allowed to formulate a separate report to illustrate their information on abiding by the human rights treaties they joined. UN Secretary General instructed UN High Commissioner for Human Rights to launch consultation with treaty-based bodies on the new simplified report procedures. In 2005, UN Secretary General reaffirmed the necessity of greatly enhancing the effectiveness of various human rights treaty-based bodies in his report of *In Larger Freedom: Towards*

Development, Security and Human Rights for All. According to him, a unified report rule should be set up for all the treaty-based bodies so that these bodies can run as a unified system. It was against this background that the UN High Commissioner for Human Rights officially proposed to establish a unified and permanent treaty body in March 2006[1]. The concept paper comprehensively outlined and illustrated the goals of the system reforms of UN human rights treaty-based bodies, achievements made by treaty-based bodies and their challenges, measures for the proposed unified permanent treaty body to cope with the existing challenges, concrete details of establishing a unified and permanent treaty body, including the forms, operation modes and function coverage, and the problems that should be considered in establishing the unified and permanent treaty body.

II. Problems and Expectations

In the new round of UN reform, we can say the reform in the human rights field took the lead and has made some achievements. However, some limitation and problems in the current system still exist. In order to further promote reform in UN human rights field, we still have many works to do. Currently, we are facing tasks in the following aspects:

First, further improving the work procedures and methods of Human Rights Council so as to establish its authority and improve its position.

In terms of work institutions and methods, Human Rights Council absorbed and improved the institutions such as the special procedures, expertise and complaint procedures of its predecessor Commission on Human Rights. However, its most prominent characteristic is the institution of universal periodic review. Universal periodic review can complement the functions and powers of other UN treaty-based bodies, aiming to ensure that those countries that do not sign and access UN human rights treaties can also be reviewed and supervised. This characteristic conquered the problem of double standards and optional treatments of the Commission on Human Rights to some extent. Undoubtedly, this is the greatest difference between Human Right Council and Commission on Human Rights. Despite all the achievement, some problems emerged during the more than four years' work of Human Rights Council. For instance, on the issues of the makeup and functions of Human Rights Council, sharp divergences exist among different countries. The Council is not that independent since its members are still dispatched by governments of its member states. Currently, criticisms mainly focus on the council's thick political atmosphere. The clear confrontation between the developing countries and developed ones during the age of Commission on Human Rights maintains in the Council. Meanwhile, new problems such as group vote also emerge, one of which is how to coordinate the work relations between

1. See *Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body*, HRI/MC/2006/CRP.1.

Human Rights Council and other UN human rights bodies so as to avoid low-efficient and redundant work. Other troubles include delay in report submission of the countries being reviewed, the coordination between review efficiency and quality and the ways of urging the countries being reviewed to accept and implement the non-binding reviewing results so as to avoid the review results coming to nothing.

Human Rights Council is only an affiliation of the UN General Assembly. Many people believe that putting Human Rights Council under the UN General Assembly at the 60th UN General Assembly was the compromise of various parties, as well as the expedient measure to avoid modifying the Charter. In terms of the necessity and possibility for Human Rights Council to be a major department of the United Nations through modifying the UN Charter, the UN General Assembly Resolution 60/251 indicated to discuss the issue within five years. Currently, the five-year period is about to expire and the United Nations should discuss the issue in 2011 at least. Whether Human Rights Council can be improved to be a major department of the United Nations as expected by former UN General Secretary Annan not only relies on its improvement levels, but also requires greater efforts from UN member states, because it will be very difficult to modify UN Charter.

Second, establishing a unified permanent treaty body. So far, the concept paper of UN High Commissioner for Human Rights on establishing a unified permanent treaty body has been distributed to all member states, related departments of the United Nations (including various treaty-based bodies) and NGOs for discussion and opinion solicitation. The current situations show that various parties do not agree with each other. Many countries and UN agencies show their interest in improving the efficiency of UN treaty body system in general principle; however, some countries and related international organizations (including NGOs) turn a blind eye on the suggestion of the Office of High Commissioner for Human Rights. Most of the supporters affirm the necessity of reforming UN human rights treaty-based bodies, such as simplifying procedures and correcting some improper practices. But they suspect on the necessity or condition maturity of establishing a unified permanent treaty body through radically changing structure. Opponents focus more on the legal and technical problems. For instance, some treaty-based bodies and disadvantageous groups worry that the reform may affect the particularity of the current human rights treaty-based bodies. It is very possible that a unified permanent treaty body reviewing all the problems related to human rights treaties cannot resolve the problems of special human rights. In terms of legal procedures, various human rights treaty-based bodies are not universally approved and the approval conditions of different treaties are different, creating many problems and procedural challenges for the establishment of a unified permanent treaty body. These problems include how to determine on the qualifications of membership of the unified permanent treaty body and whether the members of the body can participate in the review and decision making of

the treaty obligation which they themselves do not approve. All these questions need further studies.

Third, giving further play to the roles of Office of UN High Commissioner for Human Rights to strengthen coordination of various UN human rights agencies. Currently, the relations and function scopes of various human rights bodies are rather confusing and need further coordination and clarification. Take the universal periodic review institution for example, one of the initial intentions of establishing the institution is to complement the reviewing functions of human rights treaty-based bodies so as to ensure countries that do not participate in human rights treaties be supervised and review; however, in practices, the countries it reviews and the questions it uses for investigations are usually the same as the regular reports of state parties required by human rights treaty-based bodies. This naturally leads to overlapping of functions with other UN human rights treaty-based bodies and increase of the burden of formulating reports for UN members. Under the circumstance, we should consider strengthening the coordination role of the Office of the UN High Commissioner for Human Rights. The Office of UN High Commissioner for Human Rights, as a part of the UN Secretariat and a permanent body, should strengthen communications with Human Rights Council and other treaty-based bodies so as to really serve as the coordination center of various UN human rights activities. The adjustment and strengthening of the functions of the UN High Commissioner for Human Rights do not need to modify UN Charter, which may relatively ease the difficulties of related reform measures and provide larger space of mediation.

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Inter-American System of Human Rights

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This document intends to review the inter-American system of protection and advocacy of human rights, its precedents, inception and evolution. It will also describe such system and the rights protection procedures, its legal entities and how they operate. It will offer as well a detailed description of the Inter-American Court of Human Rights, of which I am president, covering its responsibilities, tasks regarding human rights protections, guarantees, interpretations, and procedures upon the court. The last section will deal with the impact and effect of the Inter-American Court of Human Rights work.

Purpose of the International Systems of Human Rights

The main purpose of both the universal system and the regional systems of human rights is the protection and advocacy of human rights, as well as to provide resources in order to protect the dignity of human beings and facilitate the effective exercise of their rights.

The inter-American system for protection and advocacy of human rights was born out of the need for a regional adoption of the international litigation for the recognition and protection of human rights. On an earlier stage, as it is well known, this took the form of declarations, rather than treaties: Declaration of Human Rights – Universal and American – in 1948. Subsequently, regional systems were established, among which the European and the American ones are particularly strong.

The Inter-American System of Human Rights was created prior to the American Convention on Human Rights (adopted in 1969) and was formally initiated with the adoption of the *American Declaration of the Rights and Duties of Man* (Bogotá, 1948). The *Inter-American Commission on Human Rights* was created in 1959[1] with the main goal of being a human rights advocacy organization, hence without the ability to act upon individual claims. In 1965, however, its roles were expanded so that it could deal with individual complaints[2], thus strengthening its capacities. The Commission was incorporated into Permanent Organ of the Organization of American States (OAS) in 1967[3].

1. 5th Meeting of Foreign Affairs Chancellors, held in Santiago de Chile, II Part of the 5th Meeting's Resolution.
2. *Río de Janeiro Protocol*.
3. *Buenos Aires Protocol*.

When the *American Convention on Human Rights*[1] came into effect on July 18th, 1978, the Inter-American System of Human Rights began to undertake a wide range of duties relating to human rights. The faculties of the Inter-American Commission were further specified and the Inter-American Court of Human Rights was established. Since not all the countries under the Organization of American States (OAS) joined the Convention, member states that are not states parties of the Convention are only bound by the *American Declaration of the Rights and Duties of Man*, while the other member states shall comply with the provisions of the Convention.

At the same time, not all the countries joining the Convention had to recognize the competence of the Inter-American Court. An independent and explicit authorization of such competence is required, as the adoption of the Convention cannot automatically have such effect. The inter-American system became, thus, a dual mechanism with three different regimes with regard to its organs, rights protection procedures and the following circumstances depending on whether or not the States had sanctioned certain regional treaties of human rights[2]:

a) States that are not states parties of the American Convention apply the American Declaration.

b) States that are as states parties of the American Convention.

c) States which joined the American Convention and also accepted the jurisdiction of the Court.

The Inter-American System Is Not a Replacement of National Authorities

We must now point out a fundamental feature, not only formal, but essential, of the Inter-American System for the Protection of Human Rights, which is a subsidiary system[3]. That means that it is only applicable after the national legal resources haven been fully utilized and exhausted without success upon a human rights complaint. That is, the Inter-American System for the Protection of Human Rights is a subsidiary one. The national courts and, in general, the national authorities, must exercise their power on the first level, as the State must be the first and fundamental entity adopting the relevant correcting measures[4].

The system of complaints and allegations and, in particular, the contentious jurisdiction

1. Sanctioned in 1969, came into effect in 1978.

2. Rodríguez Rescia, Víctor. *Op. Cit*. p. 4.

3. According to the Preamble of the American Convention on Human Rights, "International protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American States."

4. Héctor Faúndez Ledesma. "El agotamiento de los recursos internos en el sistema interamericano de protección de los derechos humanos." (The exhaustion of internal resources in the inter-American system for protection of the human rights) Address to the XXV Interdisciplinary Course on Human Rights, July 9th to 20th, 2007, San José de Costa Rica.

of the Court becomes active only when the domestic legal resources have been fully exhausted. It is, again, "subsidiary." According to professor Piza Escalante[1], the contentious jurisdiction of the Court is subsidiary in three aspects: i) The international protection of human rights was created and makes sense only as long as the domestic legal systems cannot guarantee them; ii) when the human rights violation has not been fully repaired by the domestic legal system; and iii) the Convention also instills prior exhaustion of the procedures upon the Inter-American Commission. In conclusion, the legal inter-American system is only an extension of the national institutions, organs and authority of the State, to which one can only apply once the latter entities have been unable to enforce the rights recognized by the Convention[2]. The Convention[3] and the jurisprudence issued by the IACHR have established that "*the rule of prior exhaustion of the domestic legal resources allows the State to solve the problem according to the national laws before entering into an international procedure, which applies particularly to international legislation on human rights, as this 'reinforces and complements' the domestic one.*"[4]

Since the IACHR is essentially an extension, the leading role belongs to the States and, within them, beyond the political authorities and their responsibilities, to the judges that, at any level, maintain daily contact with the citizenry. The national courts are, in fact, the institutions in which lies the critical role of guarantors of the rights established in international agreements. Remaining close to the international standards and the fundamental canons that give preference to people's rights, the national legal systems invigorate and legitimize their role and that of the Law as an institution. Without opening the door to the so-called "government of the judges," it is obviously on the domestic judges that lies the paramount

1. Piza Escalante, Rodolfo. "La Jurisdicción Contenciosa del Tribunal Interamericano de Derechos Humanos vol., La Corte Interamericana de Derechos Humanos: Estudios y Documentos." (Contentious Jurisdiction of the Inter-American Human Rights Court vol., The Inter-American Human Rights Court: Research and Documents) San José de Costa Rica, Inter-American Institute of Human Rights, 1985, pp. 162-163.

2. Espino Cortés, Hernán. "En torno a la ejecución de las sentencias de la Corte Interamericana de Derechos Humanos" (Dealing with the enforcement of the rulings issued by Inter-American Court of Human Rights) Universidad Nacional Mayor de San Marcos, Lima-Perú, 2005.

3. Art. 46 of the American Convention on Human Rights:

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law; (…)

2. The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when: a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

4. *Cf.* Case Fairén Garbi and Solís Corrales Vs. Honduras. Content. Ruling of March 15th, 1989. Series C, Nr. 6, Par. 85; Caso Godínez Cruz Vs. Honduras. Content. Ruling of January 20th, 1989. Series C, Nr. 5, Par. 4, and Case Velásquez Rodríguez Vs. Honduras. Content. Ruling of July 29th, 1988. Series C, Nr. 4, Par. 61.

responsibility of safeguarding the presence of human rights in every action of the State.

Content and Structure of the Inter-American System

The Inter-American System of Human Rights has a first precedent in the *American Declaration of the Rights and Duties of Man* of 1948. The main legal frame is, though, the *American Convention on Human Rights* and its *Protocol on Economic, Social and Cultural Rights*[1] and the protocol to abolish the Death Penalty[2]. In addition, there are four more Inter-American Conventions on specific subjects: to prevent and punish torture[3], on forced disappearance of persons[4], on prevention, punishment and eradication of violence against women[5] and on the elimination of all forms of discrimination against persons with disabilities[6].

The organs in charge of the protection of the rights in the Inter-American System are the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights.

The Inter-American Commission consists of seven members elected by the General Assembly of the Organization of American States (OAS). The Commission is an organ that advocates and protects the human rights; however, it is not to be considered as a legal organ, but as a quasi-legal one. Its authority stems from the Charter and from the American Convention on Human Rights. It can be said that its duties are "political" and "quasi-legal."

This "political" dimension refers to the Commission's capacity of using political tools and mechanisms such as negotiation, international pressure, quiet diplomacy or public denunciation through press releases and reports[7] to perform its mission of advocacy and protection of human rights. The "quasi-legal" dimension, on the other hand, refers to the Commission's capacity for processing specific cases of human rights violations following individual petitions or communications, as well as that of requesting the different States to adopt cautionary measures and to appear in court in those cases anticipated by the Convention.

1. Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, "San Salvador Protocol" (1988, came into effect: 11/16/1999).
2. Protocol to the Inter-American Convention on Human Rights to Abolish the Death Penalty (1990; came into effect on deposit).
3. Inter-American Convention to Prevent and Punish Torture (1985; came into effect: 2/28/1987).
4. Inter-American Convention on Forced Disappearance of Persons (1994; came into effect: 3/28/1996).
5. Inter-American Convention on Prevention, Punishment and Eradication of Violence against Women, "Belém do Pará Convention" (1994; came into effect: 3/5/1995).
6. Inter-American Convention on Elimination of All Forms of Discrimination against Persons with Disabilities (1999; came into effect: 9/14/2001).
7. Marin, Claudia; Rodríguez-Pinzón, Diego; Guevara B., José A. "Derecho Internacional de los Derechos Humanos" (International Law of Human Rights). Universidad Iberoamericana; College of Law, American University. Distribuciones Fontamara S.A. Mexico, Mexico D.F. 2004, pp. 177-178.

The Inter-American Court of Human Rights was created by the *American Convention on Human Rights* (Chapter VII of Part II) and was established in 1979. It is an autonomous legal body of the inter-American system of human rights and its aim is to interpret and apply the resolutions of the American Convention on Human Rights. It consists of seven judges elected by OAS countries that have also joined the Convention.

As per the American Convention stipulations, the Court performs two types of duties: the advisory ones (to issue advice on interpretation of human rights matters) and the contentious (resolution of specific cases through rulings that are binding on the concerned State). It is also entitled to adopt cautionary measures in case of "extreme graving and urgency" risking irreparable and imminent damage to the victim or victims[1], and procedure that can be started both by the concerned party or *ex officio*[2].

Its advisory duties, which have to be understood as the authority to issue abstract[3] opinions, as per the Convention[4] stipulations, refers to the interpretation of a disposition or dispositions of the Convention and can be requested by any of the member States of the OAS, by the Commission, or by any of the other organs of the OAS. It can advise also on the compatibility between any domestic law and the Convention or on any other treaty concerning the protection of human rights as well as on the interpretation and implementation of the Convention in a specific case previously considered by the Commission, and requested by the State that has agreed to submit to the contentious authority of the Court or by the Commission[5].

The contentious duties of the Inter-American Court of Human Rights are the most significant ones. Their legal foundation is the prior submission to the Court's authority by the States member[6]. They entail the Court's competency to rule on fillings about violation of the American Convention dispositions or of other human rights treaties, which grant the Court jurisdiction to supervise compliance with their agreements[7]. This means that the Court processes and scrutinizes specific complaints, establishes the truthfulness of the reported facts and decides if they constitute a violation of the American Convention in order to ascertain whether the concerned State has an international responsibility and subsequently, if so, determine the compensation measures that the Court deems necessary.

The contentious procedures can be initiated by individual petitions, or through individual State petitions, provided that the procedures before the Inter-American

1. American Convention on human Rights and Regulations of the Court sanctioned on November 24th, 2009 during the LXXXV Ordinary Period of Sessions held from November 16th to 28th, 2009 and into effect since January 1st, 2010. Art. 27.
2. Regulations of the Court, *Op Cit.* Art. 27.1, 27.2 y 27.3.
3. Marin, Claudia; Rodríguez-Pinzón, Diego; Guevara B., José A. *Op Cit*. p. 264.
4. Articles 62.3 and 64.
5. O'Donnell, Daniel. Colombian UN Office of the High Commissioner of Human Rights. International Law on Human Rights; Regulations, precedents of law and doctrine of the universal and inter-American systems. 2004. p. 45.
6. American Convention on Human Rights. Art. 62.
7. Marin, Claudia; Rodríguez-Pinzón, Diego; Guevara B., José A. *Op Cit*. p. 217.

Commission have been previously exhauste[1]. Obviously there are certain requirements so that the Court's authority can be exercised, which are based on the person (active and passive legitimation), the subject matter (law that can be applied), geography (facts that affect persons under the jurisdiction of the State allegedly liable) and time (moment upon which the Court has authority to rule over the case).

Regarding the application of other tools of International Law, the Inter-American Court of Human Rights has leaned towards a rather restrictive interpretation. In the case of Las Palmeras Vs. Colombia, regarding the application of International Humanitarian Law, the Court recognized that the States have granted permission to apply specifically the dispositions of the American Convention under its contentious duties[2], but it could also use other rules of international law or of international human rights law to help interpret or explain the Convention and apply other inter-American treaties which grant the Court authority to monitor compliance by the States that sanctioned them[3]. In the case Paniagua Morales and others Vs. Guatemala, the Court acknowledged for the first time that it could use other human rights treaties as part of a "comprehensive international *corpus iuris*" in order to assert the content and extent of the American Convention.

Regarding the application of other inter-American tools on human rights law beyond the Convention, there are three treaties which grant authority to the Commission and the Inter-American Court to monitor compliance by the States when sanctioning them: *The Protocol on Economic, Social and Cultural Rights*[4], the *Inter-American Convention on Forced Disappearance of Persons*[5] and the *Inter-*

1. *See for instance*: Inter-American Court of Human Rights. Case Viviana Gallardo and others. Series A, Nr. 101. Resolution of November 13th, 1981. The Inter-American Court of Human Rights establishes that "The Court wants to highlight how the text of article 61.2 clearly states that 'In order for the Court to acknowledge any case, it is first necessary that the procedures foreseen in articles 48 to 50 have been exhausted.' Obviously, according to the principles of International Law regarding the interpretation of treaties, the disposition previously quoted must be understood according to the 'general sense that should be ascribed to the terms of the treaty on their own context and considering their object and purpose' (Vienna Convention on the Law of Treaties, article 31.1 Par. 20)."

2. Inter-American Court of Human Rights. Las Palmeras Vs. Colombia Case. Preliminary Exceptions. Ruling of February 4th, 2000. Series C, Nr. 67, Par. 32-33.

3. Marin, Claudia; Rodríguez-Pinzón, Diego; Guevara B., José A. *Op. Cit*. p. 229.

4. **Article 19: Means of Protection**: 6. Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights.

5. **Article XIII:** For the purposes of this Convention, the processing of petitions or communications presented to the Inter-American Commission on Human Rights alleging the forced disappearance of persons shall be subject to the procedures established in the American Convention on Human Rights and to the Statue and Regulations of the Inter-American Commission on Human Rights and to the Statute and Rules of Procedure of the Inter-American Court of Human Rights, including the provisions on precautionary measures.

American Convention on Prevention, Punishment and Eradication of Violence Against Women[1]. The express and separate acceptance of the contentious duties of the Court according to the American Convention (Art. 62), informs the Court about Convention violations as well as about other inter-American legal tools, which grants authority to the Court.

Procedure before the Inter-American Court

The proceeding at the IACHR initiates with the submission of the case by the Commission or by one of the State Parties[2]. The Court has been fully operational for 31 years and in all those years, all cases have been submitted by the Commission. No State has so far exercised its right to file a case against another State before the Court for an alleged human rights violation. Upon notice of the presentation of the case, the alleged victim or his or her representatives may submit to the Court a brief containing pleadings, motions, and evidence[3].

The concerned State will be able to state its position regarding the presentation of the case[4] and set out preliminary objections[5]. The Commission, alleged victims or their representatives, and, if applicable, the petitioning State, may present their observations to the preliminary objections[6]. Afterwards, the Presidency shall announce the date on which oral proceedings will open[7] and shall fix the necessary hearings, in which the parties will submit their depositions and witnesses and expert witnesses render their statements and are questioned. Finally, the alleged victims or their representatives, the respondent State, and, if applicable, the petitioning State, shall have the opportunity to present final written arguments and the Commission may also submit written observations[8]. A case can be discontinued because the entity that has presented the case notifies the Court of its intention not to proceed with it[9], because of acquiescence[10] by the respondent and because of a friendly settlement[11] by the parties, or continue until a final and unappealable judgment[12] is issued.

1. **Article 12:** Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions.
2. American Convention on Human Rights. Art. 61.1.
3. Rules of Procedure of the Court, *Supra note* 13, Art. 40.
4. Rules of Procedure of the Court, *Supra note* 13, Art. 41.
5. Rules of Procedure of the Court, *Supra note* 13, Art. 42.
6. Rules of Procedure of the Court, *Supra note* 13, Art. 42.4.
7. Rules of Procedure of the Court, *Supra note* 13, Art. 45.
8. Rules of Procedure of the Court, *Supra note* 13, Art. 56.
9. Rules of Procedure of the Court, *Supra note* 13, Art. 61.
10. Rules of Procedure of the Court, *Supra note* 13, Art. 62.
11. Rules of Procedure of the Court, *Supra note* 13, Art. 63. Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of these conditions.
12. Rules of Procedure of the Court, *Supra note* 13, Chapter VII, Art. 65 to 67.

If the IACHR determines in the ruling that there has been a violation of a right protected by the inter-American system of human rights, the Court establishes the international responsibility of the State and, according to the principle of integral reparation, decides and sets the reparations and costs that the respondent State should bear. In principle, the ruling will try to restore the breached right or freedom, returning to the situation prior to the violation, and to remove the consequences of such violation.

However, the Court has established that the reparations should pursuit transformation, so that their effect is not only to restore, but also to correct (transforming spirit of the reparations)[1]. If integral restoration is not possible, the Court has ordered other reparations, such as compensation for material (financial loss and general damages) and non-pecuniary (moral) damages caused, physical and psychological rehabilitation of victims and their families, and other measures of satisfaction and guarantees of non-repetition, such as changes in the laws or practices of the State.

The procedure for monitoring compliance with the judgments and other decisions of the Court shall be carried out through the submission of reports by the State and observations by the victims or their legal representatives. In order to evaluate compliance, the Court may also request expert opinions or reports that it considers appropriate[2].

Impact of the IACHR

In the three decades that the Inter-American Court has been in operation, the world and the region have experienced great changes in political, economic and social levels, and processes that have also brought about improvements in the protection of human rights.

In the last five years, the IACHR has resolved more cases than in all its previous history. Simultaneously, it has given priority to compliance with an essential principle of the rights of the people, which is that of reasonable deadlines, which the Court always imposes to the States, and to itself, as befits any supranational body on this area. The Court has shortened the deadlines to resolve any given case, achieving a reduction from 38 to 17 months in the average time of solving a case from the moment that it is filed until the ruling is issued.

The Court has not only increased significantly the number of cases on which it has ruled on the merits. It has also increased its work in a stage that is essential to ensure compliance of its ruling, which is that of monitoring of the rulings, that the Treaty entrusts the Court itself with. For instance, in 2009, the number of resolutions and decisions on judgment compliance monitoring that the Court issued increased by more than 30%. This intense activity has had, among others, the positive consequence that there are no cases delayed. The oldest ones that

1. IACHR. Case González and others ("Campo Algodonero") Vs. México. Preliminary Exceptions, Content, Reparation and Costs. Judgment of November 16th, 2009. Series C, Nr. 205, Par. 450.
2. Rules of Procedure of the Court, *Supra note* 13, Art. 69.

the Court is handling were initiated last year, in 2009.

The Court's work portrays its position as a guarantor of human rights and its advanced attitude towards human rights protection. The extent and impact of the Inter-American Court's decisions has been conveyed by the variety of topics that they have covered: access to justice, guarantee of due process, overcoming impunity, integral reparation to victims, protection of people in particularly vulnerable circumstances (ethnic minorities, children, women and persons kept against their will), just to mention some examples. All of this has been echoed in the strengthening of guarantees in a wide variety of topics.

The jurisprudence of the IACHR has evolved from its early decisions to the most recent ones, portraying further protection of the rights of the victim along with the broadening of the concept of victim, the victim's right to justice and the corresponding duty of the State to prosecute and punish those responsible, as well as the recognition of greater opportunities for the participation of victims both in domestic criminal proceedings and before the Inter-American Court, all of which has had a strong impact in the democratization of access to justice. With regard to reparations, it has included non-pecuniary approaches, pursuing to repair beyond simply delivering compensation, creating processes that allow for an effective transition to the respect and guarantee of human rights. It has ordered among other things: i) constitutional and legal reforms[1]; ii) cancellation or reopening of proceedings[2]; and iii) adoption of public policies[3].

Inter-American Justice and Domestic Courts

Today, the International Public Law and, within it, the International Law of Human Rights, are highly codified and have monitoring and implementing bodies that in some cases are real courts, capable of making decisions binding on States, such as the Inter-American Court of Human Rights.

Under this perspective, it is significant that the American States have made themselves internationally liable to a certain way of organization and to create a court – the Inter-American Court of Human Rights – with the power to make binding decisions on how and when these liabilities may have been breached. In addition, the regional court may stipulate reparation for any international breach committed. Many of the arguments and legal criteria

1. *See for instance*: IACHR. Case of the Massacre of Dos Erres Vs. Guatemala. Preliminary Exceptions, Content, Reparation and Costs. Judgment of November 24th, 2009. Series C, Nr. 211, Par. 242.

2. *See for instance*: IACHR. Case Fermín Ramírez Vs. Guatemala. Monitoring Judgment Compliance. Resolution of the Inter-American Court of Human Rights of May 9th, 2008. Considerations 6, 7 and 8; Point of Statement 1-b, and Case Raxcacó Reyes Vs. Guatemala. Monitoring Judgment Compliance. Resolution of the Inter-American Court of Human Rights of May 9th, 2008. Considerations 6, 7 and 8; Point of Statement 1-b.

3. *See for instance*: IACHR. Case Ximenes Lopes Vs. Brazil. Monitoring Judgment Compliance. Resolution of the Inter-American Court of Human Rights of May 2nd, 2008, Par. 16 to 20, and Resolution of the Inter-American Court of Human Rights of September 21st, 2009, Par. 15-20.

adopted by the organs of protection, such as the Inter-American Court, can progressively become core ingredients in the decisions of national courts in a dynamic process of reinterpretation of existing rules of positive law at the domestic level. Also, they may become components of public policies in relevant areas such as the rights of indigenous peoples and the use of natural resources.

The Court has been enriching and refining its legal production, which has a growing impact on reality. Today, the binding nature of judgments of the Court is not questioned and, in essence, the States comply with them. Most notable, however, is that national courts are increasingly drawing on the criteria of the jurisprudence established by the Court. The Court has therefore become an international arena serving the most relevant courts in Latin America as inspiration for judicial reasoning; its jurisprudence multiplies through national legal arenas in hundreds and, perhaps, thousands of cases that it would never have come to know.

The regional court, meanwhile, also draws on the important jurisprudence of national bodies such as, for example, decisions of the State Council of Colombia on reparations. Several Supreme or Constitutional domestic Courts have argued that the interpretation of the American Convention must be in accordance with the jurisprudence of the IACHR (Argentina, Bolivia, Colombia, Mexico and Peru, for example), subsequently establishing that this pattern of interpretation has the value of a mandatory precedent for the authorities to comply with.

Other courts have established that Court decisions do not require an internal process of ratification because they are self-enforceable by nature, either by the constitutionality section or under a broad interpretation of the *pro homine* clause recognized in the Political Constitutions (eg Brazil, Costa Rica). They have also established the binding effect of the judgments of the Inter-American Court, not only that of the resolutions, but also that of the legal grounds (Peru). Constitutional changes have been made to accommodate domestic legislation to international law[1], and it is becoming increasingly customary to consider its laws as conventional[2]. The jurisprudence of the Inter-American Court already occupies a significant space in the process and resolution of conflicts on very different aspects of human rights in Latin America. In a rich dynamics of interaction, courts, constitutional courts, and supreme courts in our region are not only implementing decisions of the

1. *See for instance*: IACHR. Case Chaparro Álvarez and Lapo Íñiguez Vs. Ecuador. Monitoring Judgment Compliance. Resolution of the Inter-American Court of Human Rights of May 19th, 2010. Par. 18-22 and Case Kimel Vs. Argentina. Monitoring Judgment Compliance. Resolution of the Inter-American Court of Human Rights of May 18th, 2010. Par. 30-35.

2. *See for instance*: IACHR. Case Radilla Pacheco Vs. Mexico. Preliminary Exceptions, Content, Reparation and Costs. Judgment of November 23rd, 2009. Series C, Nr. 209, Par. 339 and Case Boyce and others Vs. Barbados. Preliminary Exceptions, Content, Reparation and Costs. Judgment of November 20th, 2007. Series C, Nr. 169, Par. 78, among others.

IACHR, but also drawing on its views to dictate their own judicial resolutions. The current dynamics reveals that the American States have invaluable and substantive organizational criteria in order to improve their institutional and legal capacity to design, organize and guarantee the rights of their people.

In conclusion, the work of the IACHR has encouraged and promoted internal processes aimed at the protection and guarantee of human rights, as well as at the democratization of access to justice, creating dynamics that go beyond the satisfaction of victims and their rights in specific cases, promoting ground reforms in defense of human rights and conducting to the erradication of human rights violations and to their progressive satisfaction.

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The Asian Development Bank and the Role of Human Rights in the Pursuit of Just and Sustainable Development in the Asia Pacific Region

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Introduction

In December 2006 the United Nations General Assembly adopted the Convention on the Rights of Persons with Disabilities (CRPD)[1], which represents a major breakthrough on the international level in the promotion and protection of the rights of persons with disabilities. The Convention reaffirms the standard canon of human rights, and formulates them in often innovative ways to reflect the experiences and violations of human rights that persons with disabilities often face.[2] Among the innovations in the CRPD is Article 32, a provision which for the first time in a United Nations human rights treaty explicitly addresses the obligations of States parties in the field of international cooperation in the field of development cooperation[3]. Article 32 requires States parties, among other things to ensure that "international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities."[4]

1. UNGA resolution 61/106, Annex I (13 December 2006), [2008] ATS 12, entered into force 3 May 2008 (ratified by Australia on 17 July 2008 and by China on 1 August 2008). At the same time the General Assembly also adopted the Optional Protocol to the Convention on the Rights of Persons with Disabilities, UNGA resolution 61/106, Annex II (13 December 2006), entered into force 3 May 2008. Australia acceded to the Optional Protocol on 21 August 2009; China has neither signed nor ratified the Optional Protocol.

2. See, eg, Rosemary Kayess and Phillip French, "Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities" (2008) 8, *Human Rights Law Review* 1.

3. Though, of course, Article 2 of the International Covenant on Economic, Social and Cultural Rights refers to international cooperation in the process of realising economic, social and cultural rights.

4. Article 32 provides:

International cooperation

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:

(a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;

While the CRPD highlights explicitly the obligations of States parties in the field of development co-operation for the first time, the question of the extent to which States parties' obligations under treaties apply to such activities (or, more generally, apply extraterritorially) has been of interest for some time[1], as has the consistency of human rights frameworks with different approaches to development and their utility in helping to achieve other development goals.[2]

This paper takes up these questions in the context of the Asian Development Bank (ADB) and considers the extent to which that institution explicitly takes into account international human rights norms in its policies and procedures, the relevance of the international human rights obligations of its members to ADB activities in general and to bilateral relations, and the potential contribution that using a human rights framework might make to achieving the development goals of the ADB, with a particular focus on the areas of gender and disability.

The paper first provides a brief description of the mandate and activities of the ADB, then notes the relevance of gender and disability issues in the context of development. It then considers the reluctance of the ADB to refer explicitly to human rights norms in its policies and procedures and its inconsistent practice in this regard. The paper then argues that the ADB and its individual member countries (both lenders and borrowers) should explicitly take into account human rights obligations that are binding on all or nearly all member countries in the activities of or funded by ADB, in particular those standards in treaties to which most ADB members are party. Finally, it identifies a number of questions for further research relating to the need to test the proposition that adopting a human rights framework will improve the development outcomes of ADB activities in light of the criteria the ADB itself uses to evaluate progress.

(b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;

(c) Facilitating cooperation in research and access to scientific and technical knowledge;

(d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

1. See F. Coomans and M. Kamminga (eds), *Extraterritorial Application of Human Rights Treaties* (Antwerp: Intersentia, 2004); A Byrnes, M Graterol and R Chartres, "State Obligation and the Convention on the Elimination of All Forms of Discrimination against Women," [2007] UNSW Law Research Series 48, available at http://law.bepress.com/unswwps/flrps/art48/.

2. See the discussions in P. J. Nelson, "Human Rights, the Millennium Development Goals, and the Future of Development Cooperation" (2007) 35(12), *World Development* 2041; P. Gready, "Reasons to be Cautious about Evidence and Evaluation: Rights-based Approaches to Development and the Emerging Culture of Evaluation" (2009) 1(3), *Journal of Human Rights Practice* 380; and S. McInerney-Lankford, "Human Rights and Development: a Comment on Challenges and Opportunities from a Legal Perspective" (2009) 1(1), *Journal of Human Rights Practice* 51.

The Asian Development Bank: Origins and Goals

The Asian Development Bank is an international organisation established in 1966 by international agreement, the ADB Charter;[1] its headquarters are in Manila. The ADB started out its life as an institution whose role was to assist developing member countries (DMCs) in the region to develop economically. It was established as an "Asian" institution, and was intended to be a regionally based and regionally focused bank reflecting the priorities and perspectives of countries in the Asia Pacific region.[2] As of October 2010 the ADB has 67 members: 48 of these come from the Asia-Pacific region, while 19 come from other parts of the world. Australia was a founding member of the organisation;[3] the People's Republic of China[4] has been a member since 1986.[5] The ADB is a significant development funder in the region: in 2009 it disbursed US$10.1 billion in loans (up from US$8.5 billion in 2008), and in the same year approved more than US$13.2 billion in loans, US$1.1 billion in grants and US$267.2 million in technical assistance.[6]

Over the years the manner in which the ADB has pursued its underlying mission of promoting development has evolved to reflect broader understandings of what development involves beyond a primary focus on economic growth as the main indicator of progress.[7] There has been an increasing emphasis on poverty reduction, to be achieved through sustainable and inclusive economic growth, and greater attention has been given to the need to avoid adverse social impacts and to take greater account of environmental impacts and sustainability in the design, implementation and assessment of the activities the ADB supports.

The ADB is a development bank, and thus its primary business is lending to governments of DMCs to support programs and projects agreed between the ADB and governments as part of individual countries' development strategies. The ADB provides financial resources to governments in a number of ways: through the provision of loans at

1. *Agreement establishing the Asian Development Bank* [*ADB Charter*], done 4 December 1965, 571 UNTS 123, [1966] ATS 13, available at http://www.adb.org/Documents/Reports/Charter/charter.pdf.

2. N. Kappagoda, *The Asian Development Bank* (Intermediate Technology, London, 1995); N. Dutt, "The US and the Asian Development Bank: Origins, structure and lending operations" (2001) 31(2), *Journal of Contemporary Asia* 241-261.

3. As of October 2010 Australia has contributed 5.78% of the captial of the ADB and has 4.917% of the votes. China has contributed 6.429% of the capital and has 5.44% of the votes.

4. The Hong Kong Special Administrative Region is also an ADB member under the designation "Hong Kong, China," and has been a member since 1969; Taiwan has been a member since 1966 – from 1966 until 1986 under the name "Republic of China," and since 1986 under the designation "Taipei, China": http://www.adb.org/About/membership.asp.

5. "The PRC has received a total of $22.96 billion in loans assistance since joining the ADB in 1986, making it the second largest ADB borrower and the largest client for private sector financing": http://www.adb.org/PRC/main.asp (as of 4 October 2010).

6. ADB, *Annual Report 09*, vol I, at 6.

7. There are varying and contested concepts of "development" (see generally R. Peet and E. R. Hartwick, *Theories of development: contentions, arguments, alternatives* (New York, Guildford Press, 2nd ed. 2009); K. Willis, *Theories and Practices of Development* (London and New York, Routledge, 2005).

commercial rates of interest, loans at concessionary rates, grants, and technical assistance funding. As many countries of the region have developed, ADB has begun to reorient itself to reflect the changing nature of the community of States which make up its membership. It has also sought to realign its activities to reflect its "comparative advantage" over other development funders in areas such as "hard" infrastructure projects (roads, bridges, and power projects), with the goal of concentrating its activities in those areas and decreasing its level of involvement in "soft" sectors such as health. It has also begun to place greater emphasis on budget support loans (large sums provided to governments to support specific sectors of the economy) rather than specific project loans; this is a development which has begun to change the way in which the ADB and the borrowing government can be held accountable for the manner in which funds are used.

The realignment of the ADB's priorities can be seen in its current Long Term Strategic Framework, Strategy 2020, adopted in 2008.[1] In this document, the ADB set three strategic agendas: inclusive growth, environmentally sustainable growth, and regional integration. These are to be pursued by focusing on five "drivers of change": (i) private sector development and private sector operations, (ii) good governance and capacity development, (iii) gender equity, (iv) knowledge solutions, and (v) partnerships. Progress is to be assessed by corporate results framework.[2]

Gender, Disability and Development

Gender

All the major international development institutions, bilateral development donors, and national governments accept that an effective development strategy requires the equal participation of women in development planning and implementation: they must be active agents in, as well as beneficiaries of, the development process. As the UN Millennium Development Project's Taskforce on Education and Gender Equality stated, "[d]evelopment policies that fail to take gender equality into account or that fail to enable women to be actors in those policies and actions will have limited effectiveness and serious costs to societies."[3] This view is shared by the World Bank[4], and other development actors, including the Australian government, whose policy on gender and development underlines "the importance

1. ADB, *Strategy 2020: The Long-Term Strategic Framework of the Asian Development Bank 2008-2020* (2008), available at http://www.adb.org/Strategy2020/default.asp.

2. *ADB Results Framework*, August 2008, available at http://www.adb.org/Documents/Policies/ADB-Results Framework/r166-08.pdf.

3. United Nations Millennium Project Taskforce on Education and Gender Equality, *Taking action: achieving gender equality and empowering women* (Earthscan, London and New York, 2005), 2-3.

4. World Bank, *Engendering Development: Through Gender Equality in Rights, Resources, and Voice* (Oxford University Press, New York, 2001).

of gender equality to growth, governance and stability" and states that "gender equality is an overarching principle of Australia's aid program" and "integral to all Australian Government aid policies, programs and initiatives."[1] The challenge is no longer to persuade donors or international development bodies that gender is critical, but rather how to ensure that this insight is given effect to in practice.

The ADB's approach to gender issues reflects this position at the level of policy,[2] but the extent to which gender perspectives have been fully incorporated into the design and implementation of projects and other activities and internalised in ADB operations has been uneven. The ADB's independent advisory body on gender issues, the External Forum on Gender and Development[3] has consistently urged the ADB to give greater prominence to gender equality perspectives and to the position of women in all its activities, and to use rights-based frameworks in addressing gender equality issues.[4] While this "call to rights" has been taken up only on a sporadic and ad hoc basis, significant progress has been made in the incorporation of gender perspectives in the work of the ADB. The shift in focus of the ADB's activities towards a greater emphasis on "hard" infrastructure projects, budget support lending, and supporting capital markets development, will pose challenges for the full integration of gender equality concerns in coming years.[5]

Disability

Although a more recent development, there is also increasing recognition of the importance of ensuring that persons with disability must be fully included in the process of development, both as participants and beneficiaries; this is advocated not just as a matter of social justice but also for sound economic reasons.The adoption of policy frameworks such as the Biwako Millennium Framework for Action Towards an Inclusive, Barrier-Free and Rights-Based Society for Persons with Disabilities in Asia and the Pacific in 2002 (and its renewal in 2007), and the entry into force in 2008 of the CRPD reflect the growing international awareness of disability both as a development and as a rights issue.

The ADB undertook a number of activities relating to disability about a decade ago, but there has been little done since that time to incorporate disability perspectives systematically

1. AusAID, *Gender equality in Australia's aid program – why and how*, March 2007, at 4, available at http://www.ausaid.gov.au/publications/pdf/gender_policy.pdf.

2. ADB, *Gender and Development* (1998), available at http://www.adb.org/Documents/Policies/Gender/gender-policy.pdf.

3. See http://www.adb.org/gender/forum.asp.

4. See, eg, ADB, *Report of the Seventh Session of the External Forum on Gender and Development (29-31 May 2006) – Outcome Document* (2006), available at http://www.adb.org/Documents/Conference/Gender_Development/Gender-Development-Jul2006.pdf.

5. ADB, *External Forum on Gender and Development: Ninth Session, 15-17 October 2008 – Outcome of Meetings*, November 2008, available at http://www.adb.org/Documents/Conference/Gender_Development/Gender-Development-Oct2008.pdf.

in its work.[1] This is so, even though the ADB recognises that persons with disability in the region are estimated to number 400 million and are consistently among the poorest of the poor. The World Bank has devoted much more attention to disability issues, and has done so within a rights-based framework.

Human Rights and Development – and the ADB

Although the ADB is not a "human rights" body, nevertheless as a regional development institution many of its goals overlap with human rights goals: the existence of poverty in the region means that millions of people fail to enjoy basic human rights – in particular fundamental economic and social rights, such as the right to an adequate standard of living, the right to health, and the right to education, among others. The achievement of the institution's development goals potentially means the achievement of important human rights goals as well.[2] There is also a significant body of literature that argues that ensuring the enjoyment of human rights can be an effective means of achieving more effective and fair development.[3] Rights analysis can be important to the setting of goals (for example, defining what type of development projects are needed, to produce what results), as well as a critical part of the process of achieving them (for example, participation of communities in decision-making is likely to lead to more effective projects, as is observance of rights to freedom of expression and organisation, and equality and non-discrimination on the basis of sex, race, ethnic or other status). The World Bank has explicitly recognised the importance of human rights in development, as have the United Nations[4] and many other development bodies.[5]

The ADB has been reluctant to embrace human rights standards explicitly in its policy documents, to use a human rights framework systematically in its policies and operations, or even to follow the World Bank in its approach to development and human rights. This reflects concerns among many member States about issues of sovereignty and universal human rights standards, sometimes justified by reference to the prohibition in the ADB Charter on "political activity" and on taking into account considerations other than "economic considerations":[6]

The Bank, its President, Vice-President(s), officers and staff shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political

1. A. Byrnes, "A New United Nations Treaty on Disability – An Opportunity for the Asian Development Bank?" in Asian Development Bank, *Gender Network News*, September 2006, http://www.adb.org/Documents/Periodicals/GNN/newsletter-16.pdf.
2. P. Uvin, *Human Rights and Development* (Kumarian Press, Bloomfield, CT, 2004).
3. See, eg, Gready, above n 7.
4. United Nations, *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding among UN Agencies* (2003), available at http://www.undg.org/?P=221.
5. P. Alston and M. Robinson (eds), *Human rights and development: towards mutual reinforcement* (Oxford University Press, Oxford and New York, 2005); Uvin, above n 25.
6. *ADB Charter*, above n 8, Article 36(2).

character of the member concerned. Only economic considerations shall be relevant to their decisions. Such considerations shall be weighed impartially in order to achieve and carry out the purpose and functions of the Bank.

This reluctance to embrace rights explicitly at the policy level extends even to those instruments which have been accepted by all, or nearly all, of ADB member States (such as the Universal Declaration of Human Rights), or treaties ratified by most ADB members such as the UN Convention on the Rights of the Child (CRC) or the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention). At the same time, the ADB has been prepared to embrace other international standards of lesser normative standing, such as the Millennium Development Goals (MDGs),[1] as part of its policy framework. While some of these embody or are closely aligned with rights frameworks,[2] they do not have the binding force of international treaty or customary law obligations.[3]

By contrast, in relation to the World Bank there has been a vigorous and public debate (to which World Bank officials have contributed) about the extent to which that institution can and should take into account human rights considerations as a matter of law and policy.[4] This is so, notwithstanding similar limitations in its Charter on political activity and taking into account considerations other than economic ones.[5] As a consequence, the approach of the World Bank has become much more flexible, and it has employed explicit human rights frameworks in some activities – although the extent to which human rights has become part of the accepted culture and way of doing things in the World Bank has been questioned.[6]

1. UN GA resolution 55/2, para. 19 (18 September 2000).

2. G. Schmidt-Traub, "The Millennium Development Goals and human rights-based approaches: moving towards a shared approach," (2009) 13, *International Journal of Human Rights* 72; P. Alston, "Ships Passing in the Night: The Current State of the Human Rights and Development Debate seen through the Lens of the Millennium Development Goals" (2005) 27 *Human Rights Quarterly* 755; C. Doyle, "Indigenous peoples and the Millennium Development Goals – 'sacrificial lambs' or equal beneficiaries?" (2009) 13(1), *International Journal of Human Rights* 44.

3. See generally Nelson, above n 7; Gready, above n 7; and McInerney-Lankford, above n 7.

4. A. Anghie, "International Financial Institutions" in C. Reus-Smit (ed), *The Politics of International Law* (Cambridge University Press, Cambridge, 2004); A. Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press, Oxford, 2006); M. Darrow, *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law* (Hart Publishing, Oxford, 2006); D. Kinley, "Human Rights and the World Bank: Practice, Politics and Law" in C. R. Kumar and D. K. Srivastava (eds), *Human Rights and Development: Law Policy and Governance* (LexisNexis, Hong Kong, 2006) 155-175; R. Dañino, *Legal Opinion on Human Rights and the Work of the World Bank*, 27 January 2006.

5. Article IV (10) provides: "The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I." *Articles of Agreement of the International Bank for Reconstruction and Development, as amended 25 August 1965 (Article III) and 30 June 1987 (Article VIII(a)),* 21 UNTS 439, [1947] ATS 15.

6. See G. A. Sarfaty, "Why Culture Matters in International Institutions: The Marginality of Human Rights at the World Bank" (2009) 103, *American Journal of International Law* 647.

There has apparently been no such public debate initiated around the ADB's position.[1] There has been some limited internal discussion of this issue within ADB, presumably spurred by the developments at the World Bank, but things have progressed no further than this. Human rights are thus not generally seen by ADB management or by many of its officials as relevant to their central task of promoting development; at best some officials consider that the ADB is in fact doing human rights work and promoting the enjoyment of human rights substantively, whether or not it explicitly employs human rights analysis in so doing.

Core Labour Standards and the ADB

Despite the ADB's reluctance explicitly and systematically to recognise rights in its rhetoric and policies, in practice it has recognised the utility of using a rights framework to design and monitor the effectiveness of development projects in some areas. The most prominent instance has been in relation to Core Labour Standards (CLS), which are based on international labour conventions. In 2002 the ADB entered into a cooperation agreement with the International Labour Organisation (ILO),[2] under which both organisations recognised their overlapping areas of responsibility and the importance of international standards on decent work in the development process. Most, though not all, ADB members are also members of the ILO and are therefore bound by basic human rights principles in the field of work, in addition to any specific ILO treaties they may have ratified. In 1998 the General Conference of the ILO declared that these fundamental human rights standards were binding on all ILO members.[3] These core standards are: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.[4]

International labour standards are, of course, human rights standards. The prohibition in Article 36(2) of the ADB Charter of "political activities" and the limitation of decisions to economic considerations only, do not appear to have stood in the way of ADB acceptance of these human rights standards as a useful analytical, monitoring and evaluative tool in areas relevant to the ADB's operations. Indeed, the ADB has gone further, underlining

1. Though Suzuki and Nanwani discuss some of these issues: E. Suzuki and S. Nanwani, "Responsibility of International Organisations: The Accountability Mechanisms of Multilateral Development Banks," (2005) 27(1), *Michigan Journal of International Law* 181-225. See also E. McGill, "The Inspection Policy of the Asian Development Bank" in G. Alfredsson and R Ring (eds), *The Inspection Panel of the World Bank: A Different Complaints Procedure* (Martinus Nijhoff, 2001) 191-208.

2. ILO, *Memorandum of Understanding between the Asian Development Bank and the International Labour Organization* (2002), available at http://www.ilo.org/public/english/bureau/leg/agreements/asdb.htm.

3. ILO, Declaration on the Fundamental Principles and Rights at Work (1998).

4. ADB, Core Labor Standards Handbook (Manila: ADB, 2006).

the importance of the CLS in its work[1] and incorporating them into its *Social Protection Strategy*.[2] Covenants are frequently included in loan agreements under which the borrowing member country undertakes to ensure observance of these standards in the implementation of the project. The ADB's *Social Protection Handbook* states that the ADB will comply with the CLS in the design and formulation of its loans, take necessary and appropriate steps to ensure that contractors, subcontractors and consultants will also do so, and regularly monitor that this has been done:[3]

On the other hand, in its safeguard policies and guidelines in many other areas the ADB makes use of its own standards that are substantively very similar to human rights standards, but generally makes no reference to those human rights standards, despite their obvious relevance. For example, human rights standards on the right to adequate housing and forced eviction are particularly pertinent to the issue of involuntary resettlement,[4] but the ADB's *Policy on Involuntary Resettlement*[5] makes no mention of the extensive human rights jurisprudence on this topic, such as the General comments of the UN Committee on Economic, Social and Cultural Rights on the right to housing,[6] and on forced evictions.[7] Other areas where human rights standards are relevant but have generally not been drawn upon include the right to education[8] and the right to health[9] in relation to education and health sector loans.

The Relevance of International Human Rights Obligations to the Work of the ADB

There is a significant body of literature addressing the question of the extent to which

1. ADB, "Core Labor Standards and ADB," April 2007, available at http://www.adb.org/Documents/Brochures/InBriefs/2007/Core-Labor-Standards.pdf.

2. ADB, *Social Protection: Our Framework, Strategies and Policy* (2003), available at http://www.adb.org/Documents/Policies/Social_Protection/default.asp.

3. Ibid at para 84, 56-57 (footnote omitted). However, the extent to which effective monitoring of the observance of CLS is actually carried out, is not clear. See generally P. Bakvis and M. McCoy, "Core Labour Standards and International Organizations: What Inroads Has Labour Made?" Friedrich Ebert Stiftung, International Trade Union Cooperation, Briefing Paper No 6/2008, at section 5(a), avilable at http://www.nuso.org/upload/fes_pub/McCoy.pdf.

4. *Oxfam Australia, Safeguarding or disregarding? Community experiences with the Asian Development Bank's Safeguard Policies* (Fitzroy, Oxfam, 2007), 14.

5. ADB, *Policy on Involuntary Resettlement* (1995), available at http://www.adb.org/Resettlement/default.asp.

6. Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (art 11)* (1991), 6th sess, UN Doc E/1992/23.

7. Committee on Economic, Social and Cultural Rights, *General Comment No. 7: The Right to Adequate Housing (art 11.1): Forced Evictions* (1997), 16th sess, UN Doc E/1988/22.

8. Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The Right to Education (art 13)* (199), 21st sess, UN Doc E/C.12/1999/10.

9. See, eg, Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (art 12)* (2000), 22nd sess, UN Doc E/C.12/2000/4.

international legal obligations formally bind the multilateral development banks,[1] though only some of this specifically addresses the position of ADB.[2] The focus of this paper is not so much on whether some of these obligations bind ADB as an international legal person by virtue of their status as customary international law rules or are a relevant source for interpreting the ADB's Charter, but rather the relevance of the international human rights treaty obligations of the individual member countries of ADB in their participation in the ADB's work of particular importance are the CRC, the CEDAW Convention, and the CRPD – to which most of the members of the ADB are already, or are likely to become, parties.

Whatever the position is in relation to the obligations that bind international organisations, there is a strong argument that States do not absolve themselves of their human rights obligations in a particular area by establishing an international organisation with responsibility in that area.[3] Indeed, it can be argued that States must conduct themselves consistently with those obligations when they participate in the activities of the organisation and must endeavour to ensure that the actions and consequences of the actions taken by those organisations do not involve violations of rights guaranteed by human rights treaties and customary international law. Given the collective nature of these organisations and their status as independent legal entities, the content of a State's obligation is a complex issue, particularly if an individual State is not in a position to control or even influence significantly decisions which may have the effect of violating the human rights of persons in other States.

There is considerable support for the application of human rights treaties in this way. For example, the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, which deal specifically with obligations under the ICESCR, state:[4]

The obligations of States to protect economic, social and cultural rights extend also to their participation in international organizations, where they act collectively. It is particularly

1. Clapham, above n 33; Anghie, above n 33; Darrow, above n 33; S. Skogly, *The Human Rights Obligations of the World Bank and the International Monetary Fund* (Routledge, London, 2001).

2. See Suzuki and Nanwani, above n 36.

3. This and the following pargpraphs draw on A. Byrnes, "Article 2" in Beate Rudolf, Marsha Freeman and Christine Chinkin (eds), *Commentary on the Convention on the Elimination of All Forms of Discrimination agasint Women* (Oxford: Oxford Unviersity Press, forthcoming, 2011).

4. *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, para. 19 in (1998) 20(3), *Human Rights Quarterly* 691, at 698. See also A. Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press, 2006), at 109, citing *Waite and Kennedy v Germany,* European Court of Human Rights, Judgment of the Grand Chamber of 18 February 1999:

"67. The Court is of the opinion that where States establish international organisations in order to pursue or strengthen their cooperation in certain fields of activities, and where they attribute to these organisations certain competences and accord them immunities, there may be implications as to the protection of fundamental rights. It would be incompatible with the purpose and object of the Convention, however, if the Contracting States were thereby absolved from their responsibility under the Convention in relation to the field of activity covered by such attribution. It should be recalled that the Convention is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective."

important for States to use their influence to ensure that violations do not result from the programmes and policies of the organizations of which they are members. It is crucial for the elimination of violations of economic, social and cultural rights for international organizations, including international financial institutions, to correct their policies and practices so that they do not result in deprivation of economic, social and cultural rights. Member States of such organizations, individually or through the governing bodies, as well as the secretariat and nongovernmental organizations should encourage and generalize the trend of several such organizations to revise their policies and programmes to take into account issues of economic, social and cultural rights, especially when these policies and programmes are implemented in countries that lack the resources to resist the pressure brought by international institutions on their decision-making affecting economic, social and cultural rights.

There is also support in the practice of the UN human rights treaty bodies for the position that a State should ensure that its actions and the consequences of any agreement it enters into or of any decision it has control over, do not violate the rights guaranteed in treaties to which it is party. Various human rights treaty committees have called on States parties: to take into account the effect of development assistance on the realization of the rights in other treaties;[1] to take into account the rights guaranteed under human rights treaties when a State is negotiating with international financial institutions in relation to loans and other forms of financing for national projects;[2] to ensure that when entering into international agreements relating to trade liberalization or other subjects, that these agreements do not have an adverse impact on protected rights,[3] and to take steps in their capacity as members of international organizations – including the various international financial institutions – to

1. This would include: ensuring that gender impact is taken into account when designing and delivering development assistance The CEDAW Committee has commended a number of States for ensuring that gender was specifically taken into account the provision of development assistance, For example, the Committee has commended Canada's policy "at the international level, in setting women's human rights standards, providing financial and other assistance to women's rights projects in developing countries as well as mainstreaming gender in its development assistance programmes and projects": Concluding comments on Canada, UN Doc A/58/38, para. 340 (2003). See also the Committee's Concluding Comments on Japan, UN Doc A/58/38, para. 355 (2003), and Ireland, UN Doc A/60/38, para. 377 (2005).

2. See, eg, Committee on Economic, Social and Cultural Rights, *General comment No. 18 (The right to work)* (2005), 35th sess, UN Doc E/C.12/GC/18, para. 30; Committee on Economic, Social and Cultural Rights, *General comment No. 12 (The right to adequate food)* (1999), 20th sess, UN Doc E/C.12/1999/5, para. 36; Committee on the Elimination of Racial Discrimination, *General recommendation XXIX (Article 1, paragraph 1 of the Convention (descent))*(1999), 61st sess, para. 7(ii). See also Principle 19 of the *Montreal Principles on Women's Economic, Social and Cultural Rights* in (2004) 26(3) *Human Rights Quarterly* 772.

3. See Committee on Economic, Social and Cultural Rights, *General comment No. 15 (The right to water)* (2002), 29th sess, UN Doc E/C.12/2002/11, para. 35; Committee on Economic, Social and Cultural Rights, *General comment No. 14 (The right to the highest attainable standard of health)*(2000), above n 48, para. 39; Committee on Economic, Social and Cultural Rights, General comment No. 13 (The right to education)(1999), above n 47, para. 56; Committee on Economic, Social and Cultural Rights, *General comment No. 12 (The right to adequate food)* (1999), above n 54, paras 19 and 36. See also *Montreal Principles*, above n 54, Principle 19.

ensure that due account is taken of protected rights in the activities of those institutions.[1]

On this approach, individual member countries are obliged to take what measures they reasonably can to ensure that they comply with their obligations under all treaties to which they are party. However, not all member countries are parties to the same treaties and, in the case of the ICCPR for example, a significant number of ADB members are still not parties. Accordingly, it might be argued that it would be unreasonable to expect the organisation as a whole to explicitly embrace the standards of treaties to which a significant proportion of member countries are not party.

However, when it comes to those treaties to which most or all ADB member countries are or are likely to become parties, the situation may arguably be claimed to be different – as the ADB community as a whole have accepted these standards as applicable to themselves; they are not imposed from outside. Into this category fall the CRC and CEDAW, and it is likely that the CPRD will also attain a similar level of ratification.

As of 4 October 2010 there were:

• 193 States parties to the CRC Convention, and all but one of the members of the ADB were parties;[2]

• 186 States parties to the CEDAW Convention, which applied to all but three members of the ADB;[3]

• 94 States parties to the CRPD – 26 ADB members were parties, and another 17 members had signed the Convention.[4] One can reasonably expect the CRPD to attain levels of ratification of the same order as CEDW in the coming years.

What this demonstrates is that among the ADB community there is a broad consensus (almost unanimity) on the content of particular human rights treaties. Given that the provisions of these treaties are binding on individual members in relation to their participation in international organisations, there is much to be said for arguing that the ADB should be taking into account these norms in designing and implementing its policies and

1. See, for example, CESCR, *General comment No. 14 (the right to the highest attainable standard of health)* (2000), para. 39. See also *Montreal Principles*, *supra* above n 54, Principle 19.

2. The only member of the ADB which is not a party to the CRC is the United States of America (which has signed but not ratified the Convention).

3. The only members of the ADB to which the CEDAW Convention does not apply are Taipei, China (which is not eligible to ratify the Convention), Samoa and the United States of America. The United States has signed but not ratified the Convention; Samoa has neither signed nor ratified the Convention.

4. Only the following members have neither signed nor ratified/acceded to the CRPD: Afghanistan, Kiribati, Marshall Islands, Federated States of Micronesia, Myanmar, Nauru, Samoa, Tajikistan, Taipei, China and Switzerland. The following States had signed the CRPD but not yet ratified it: Bhutan, Brunei Darussalam, Cambodia, Fiji Islands, Georgia, Indonesia, Japan, Kazakhstan, Pakistan, Solomon Islands, Sri Lanka, Tonga, Uzbekistan, Viet Nam, Finland, Ireland, Luxembourg, Netherlands, Norway, United States of America. Most of these States can be expected to ratify the CRPD in the next few years.

activities.

There is no reason to be found in the ADB Charter why this should not be done. While the few studies of the ADB as an institution[1] do not address the human rights or "political activities"/"economic considerations," there has been extensive discussion of the almost identical provisions in the World Bank Charter. The debates, in that context and subsequent practice of the World Bank, make it clear that taking human rights into considerations in the design and implementation of activities does not of itself offend against those prohibitions. In fact, the legal position seems very clear – nearly all the member States of the ADB are obliged to ensure that they observe the relevant human rights standards in the CRC and CEDAW (and arguably others) in their participation in Bank governance, and also in the agreements they enter into with the Bank as borrowers or recipients of grants or technical assistance. Indeed, there appears to be no reason why the Bank should not draw a borrowing member's attention to its human rights obligations in order to ensure that the relevant partners on the borrowing side are present in negotiations and appropriate safeguards included in any loan agreement in the form of explicit standards and tailored evaluation procedures. However, in practice, this appears to be done relatively infrequently.

The (Lack of) Power of Legal Norms and the Implications for Research and Advocacy

Perhaps the more interesting question – to international lawyers at any rate – is why these arguments, if made at all in the ADB environment, have so little persuasive power. The answer here lies not just in the political sensitivity for some States of even the mention of the term "human rights," let alone the implications for them of its substantive content. It arises equally importantly from the different perspectives applied by those who place a premium on international legal obligations (above all, international lawyers, and human rights advocates), and those who make up the bulk of the development community, who have different disciplinary backgrounds and different perspectives on what drives and is important in development.[2]

The cognitive and professional frameworks and development assumptions that make up the dominant culture of an institution such as the ADB are critical to how claims of law and its priority are received. Of itself, the normative status of international law has little persuasive value in this context – interest is likely only to be aroused when it can be demonstrated that legal or human rights frameworks have an instrumental value, by helping

1. J. White, Regional Development Banks: *The Asian, African and Inter-American Development Banks* (Praeger, New York, 1972), Chapter 2, 33-86; P. W. Huang, *The Asian Development Bank: Diplomacy and Development in Asia* (Vantage Press, New York, 1975); Kappagoda, above n 9.

2. See generally Sarfaty, above n 35.

to achieve the goals that the institution considers critical to development.[1]

The challenge is thus not only to demonstrate that human rights may be important process goals in themselves (many of the values of human rights as process are recognised in the development universe – participation, consultation, transparency, due process) but also how human rights can bring about better development in the terms in which development institutions themselves measures that progress.[2]

It is here that those interested in securing a more prominent place for international legal norms in the ADB world face a major task. There has been much discussion of rights-based approaches (RBA)[3] to development and there is considerable support for the importance of rights-based approaches within bodies such as the World Bank and AusAID.[4] Although there is evidence that RBA may on occasion produce better results,[5] there has been little detailed work on this in the context of the ADB, or by the ADB. Human rights may have an impact on measurable development advances, but they also potentially pose challenges to systemic structures or deprivation and exclusion – that is why they can be so challenging to some States and why they are often fiercely resisted in this type of debate.

As a practical matter, to advance the case for the more explicit and systematic inclusion of relevant human rights norms in ADB policies and practices, a case will have to be made that responds to the perspectives and priorities of those who test the relevance of such external standards by reference to their efficacy. To do this, scholars, advocates and the ADB itself need to undertake a critical examination of ADB practice in areas where there are broadly accepted human rights norms (including CLS, but also CEDAW and CRPD), and to assess their actual or potential contribution to ADB operations and goals.

This would involve:

• an examination of the development goals set by the ADB and the indicators which the ADB uses to evaluate its success in achieving those goals in relation to gender equality and the position of marginalised groups such as persons with disabilities, and its systems for assessing the implementation of Core Labour Standards in its operations;

• identification of the specific human rights and corresponding indicators that are relevant to these specific areas; and

1. See V. Gauri, "Social Rights and Economics: Claims to Health Care and Education in Developing Countries" (2004) 32(3), *World Development* 465.

2. See, eg, McInerney-Lankford, above n 7, 57.

3. See, eg, Uvin, above n 25; A. Frankovits, P. Earle, and E. Sidoti, *The Rights Way to Development: Policy and Practice* (Human Rights Council of Australia, North Sydney, 2001); McInerney-Lankford, above n 7, 62-68.

4. AusAID (2007), *Gender equality in Australia's aid program – why and how*, March 2007, available at http://www.ausaid.gov.au/publications/pdf/gender_policy.pdf; AusAID, *Development for All: Towards a disability-inclusive Australian aid program 2009-2014* (2008), http://www.ausaid.gov.au/keyaid/pdf/FINAL AusAID_Development for All.pdf.

5. See, eg, Gready, above n 7, at 390-398.

• identification of projects in which it is demonstrable that a failure to adopt a "human rights approach" or to advert to specific human rights, has led to a less effective outcome in terms of the ADB's development goals than would have occurred had a human rights-focused approach been taken.

Conclusion

The activities of the ADB have the potential both to advance human rights, but also to facilitate violations of them (which may in turn undermine long-term goals of development). Advocates of human rights maintain that not only is the enjoyment of human rights important in itself (including the process aspects of human rights guarantees), but that adopting an explicit human rights framework of analysis has a range of benefits, including enhanced development effectiveness.

It is therefore timely to undertake a systemic and detailed analysis of how the ADB has integrated human rights norms and substantive human rights considerations in its activities, and to provide an opportunity to bring together those who see legal norms as important components of an inclusive and sustainable development and those who approach that goal from different disciplinary and conceptual frameworks that assign no particular privileged place to legal and human rights norms.

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STUDY ON HUMAN RIGHTS IN CHINA

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Social Construction and Human Rights Cause

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China

Entering the 21st century, China is contemporarily at a new historical starting point. During the process of giving priority to the central task of economic construction and coordinating economic and social development, the work of social construction is placed in an important position and the development of human rights cause also exhibits new characteristics. To respect and protect human rights and develop human rights cause, we should pay attention to and adapt ourselves to these new characteristics.

Human Rights Cause against the Backdrop of Social Construction Problems

To promote the development of China's human rights cause, we need to study people's demands of human rights in different stages; to do this, we should objectively understand the characteristics of social development in various stages.

During the Third Session of the 11th National Committee of Chinese People's Political Consultative Conference (CPPCC) held in March 2010, members of CPPCC National Committee, the central committees of various non-Communist parties, All-China Federation of Industry and Commerce, related people's groups and various CPPCC special committees implemented their functions of political consultation, democratic supervision and took part in the discussion and handling of political affairs through actively proposing motions. According to the report made by Committee for Handling Proposals to the CPPCC National Committee, a total of 5,430 motions were received during the session; 1,987 members participated in proposing motions, accounting for 88.82 percent of the total members. In all, 5,163 motions were registered, accounting for 95.08 percent of the total. These figures indicate that CPPCC members were highly enthusiastic in participating in the discussion and handling of political affairs, and their motions were quite worthy.

What we should pay more attention to and value is the contents of the motions. According to the report made by Committee for Handling Proposals to the CPPCC National Committee, the first category of the motions, with its number exceeding 2,200, were related to accelerating transformation of economic development modes and adjustment of economic structures so as to maintain stable and rapid economic development; the second category were about accelerating development of social causes and protecting and improving

people's livelihood, totaling more than 1,700; over 1,100 motions fell in the third category of promoting social harmony and maintaining social stability. Meanwhile, there were some motions on developing relations across Taiwan Straits, working hard to hold Shanghai Expo, strengthening education on civil awareness and intensifying the work of CPPCC. In the second category, a total of 510 motions were related to educational and sci-tech development and 160 were related to the development of cultural cause. The third category consisted of 514 motions related to social harmony, 182 motions related to social stability, 204 motions related to the construction of democratic politics and 166 motions related to judicial justice.

If we classify these motions according to the four aspects of the overall arrangement of socialism with Chinese characteristics, namely, economic construction, political construction, cultural construction and social construction, and analyze these figures, we can see that more than 2,200 motions were related to economic construction, 370 related to political construction, 670 related to cultural construction (the number was 160 if we exclude 510 motions on educational and sci-tech development), and 1,760 related to social construction (the number should be 2,270 if we include the 510 motions on educational and sci-tech development).

We should pay attention to these figures because they reflected China's hot social issues and the concerns of the CPPCC members. The issues such as how to classify and summarize the contents of the motions, and whether or not these motions could reflect the real thinking of these CPPCC members are sure to exist. What matters is that these motions generally reflected China's social contradictions and its characteristics in the current stage. We entered the 21st Century with the two great achieved goals of having "adequate food and clothing" and striving for a "well-off society" and now are working hard toward the goal of modernization. On the one hand, China is still in the primary stage of Socialism and is yet to complete the tasks of industrialization and modernization. Chinese society's principal challenge is still the gap between the ever-growing material and cultural needs of the people and the low level of social production. Thus, economic construction is at the core of our work; on the other hand, after entering the well-off society, people have greater demands to solve the imbalanced development between urban and rural areas and among different regions, and to enhance social welfares and social security. The task of social construction is facing us severely. All these are important basis for the CPC Central Committed to put forward the Scientific Outlook on Development. China, in the new historical starting point, exhibits a series of new stage characteristics in its economic and social development. Structural analysis of the motions by CPPCC members show that more than 2,200 motions were related to economic construction, ranking No.1; motions related to social construction occupied the second place, exceeding 1,760 in number; 670 motions were related to cultural construction, taking the third place; and there were 370 motions talking about political

construction, ranking No.4. In general, this reflected China's social contradictions in the current stage and its stage characteristics.

Today, China is at the primary stage of Socialism and economic construction is at the core of various tasks of China. But we also need to pay attention to emergence of the issues related to social construction. The new stage characteristic in China's economic and social development has provided objective basis for us to promote human rights causes in the current stage.

Emergence of Social Construction Issues Putting Forward New Requirements for the Development of Human Rights Cause

Today, we should unswervingly make economic construction our central work, as well as coordinate economic and social development so as to put social construction in a more prominent position. How can we manage it? This is an important topic that need exploration and research and cannot be solved only through writing articles or putting forward slogans. For this purpose, we need to study on what new requirements the emergence of social construction issues has put forward on China's human rights cause development.

First, we have noticed that social construction has new requirements on respect for and protection of people's rights to subsistence and development, especially on people's rights of social welfare and sustainable development.

In order to unswervingly make economic construction our central work, as well as to coordinate economic and social development, we should notice that economic construction and social construction have a common requirement. That is, both are solving the problems of people's livelihood.

It is wrong to say that China only focused on economic construction and ignored people's livelihood in the past and started to pay attention to people's livelihood only several years ago. It is not the reality. After the reform and opening up to the outside world, we have been adhering to the central task of economic construction and have completed two important tasks: One is solving the problem of providing adequate food and clothing; and the other is striving for a well-off society. Aren't the two important tasks related to people's livelihood?

Social construction should emphasize people's livelihood, because the problems and contradictions related to social construction are very complicated and we should do a good job in social construction under the principle of putting people first. Thus, we should shake off the restraints of various doctrinal views on the issues of social construction, including the influence of social security mode of high welfare from the western countries. We should arrange all the aspects of social construction around the realistic livelihood of the Chinese people so as to bring real benefit for the people.

In the historical process of China's reform and opening up, people's livelihood is always the fundamental problem we need to solve. However, in the different development stages of reform and opening up, the key issues of people's livelihood that should be solved also experienced the strategic shift from "taking class struggle as the central task" to "regarding economic construction as the central task." Today, we are deepening the strategic shift. China, standing at the new historical starting point, has objectively entered the new stage of putting social construction in a more prominent position and coordinating economic and social development while continuing regarding economic construction as the central task. The fundamental task of the new stage is to stick to scientific development and realize social harmony.

The starting point and the goal of economic construction are people's livelihood; the starting point and the goal of social construction are more to be people's livelihood. However, in the process of economic construction, we need to solve the problems related to people's right to subsistence. China has a "three-step" development strategy of modernization construction. The first step is solving the problem of providing adequate food and clothing, and the second step is solving the problem of striving for a well-off society. All these efforts were made to solve the problems related to people's survival. In the new stage of regarding economic construction as the central work and coordinating economic and social development, people's livelihood covers not only people's existence, but also the issues of people's social welfare, social security and their sustainable development. Perfecting people's livelihood is the task of constructing a well-off society in an all-round way and its new requirements put forward by the 16th and 17th National Congress of the Communist Party of China, as well as our major tasks and requirements of adhering to scientific development and realizing social harmony. These tasks have included the social rights and requirements of respecting and protecting people's social welfare and people's sustainable development.

Meanwhile, we noticed that social construction puts forward new requirements for respecting and protecting citizens' orderly political participation.

We should further be aware that since the issue of people's livelihood is related to people's subsistence and development, we cannot solve problems related to people's livelihood without the development of democratic politics. To research the issue of people's livelihood, we should not simply focus on people's livelihood, but should solve the problems related to people's livelihood by closely linking them with the development of democratic politics.

It is our important experience in the process of constantly promoting reform and opening up after the Third Plenary Session of the 11th Central Committee of the Communist Party of China to combine political system reform with economic system reform and combine democratic politics development with improving people's livelihood.

On the one hand, people's livelihood is the starting point and the goal of democracy. Without focusing on people's livelihood, democracy would lose people's confidence, which also attaints democracy. Thus, we focus the starting points and goals of all our works on the fundamental interests of the vast people. The fundamental goals of promoting political system reform and developing democratic politics should reflect the improvement of people's livelihood and the ability of meeting people's material and cultural demands so as to provide people with visible benefits.

On the other hand, people's livelihood cannot be independent from democracy since democracy is the guarantee of people's livelihood and better livelihood should be realized through democracy. We pay special attention to combining political system reform with economic system reform and combine democratic politics development with improvement of people's livelihood during the process of reform and opening up. Thus, we can better wipe out the system barriers in economic system reform and in productive force development through political system reform, better solve the problems related to people's livelihood through developing democratic politics and meet people's increasing material and cultural demands.

Meanwhile, we should also realize that the emphasis of the democracy, which set solving problems related to people's livelihood as its starting point and goal, may also vary according to varied focuses of people's livelihood in different development stages. In accordance with the historical tasks and characteristics of the above-mentioned two stages of people's livelihood development, the work, function and responsibility of governments of various levels also experienced great changes, putting forward new requirements to the development of democratic politics.

To solve the problems related to people's livelihood during the process of economic construction, we should focus on the problems related to people's existence. This is a strategic decision that should be given priority by governments of various levels. For instance, during the process of leading economic construction, in order to do a good job in solving problems related to people's livelihood, we should make decisions on issues such as whether to develop traditional planned economy or develop socialist market economy through reforms, and how to develop socialist market economy so as to better solve the problems related to people's livelihood. This decision should be made economically and politically. Politically, we should make decision on the "independence rights" for people to develop economy. It is an important task. In the primary stage of China's reform and opening up, in order to hand over the independence rights of production and operation in rural areas to farmers, China decided to nullify People's Commune System and launched the Household Contract Responsibility System, emancipating and developing social productivity in rural areas. To support the system, we also established villagers' committees through direct votes by villagers. We

implemented the system of directly electing deputies of the people's congress of county level and below, and established the standing committees of the people's congresses of the county level. In order to develop socialist market economy and allocate resources based on the market under the macro-economic control, we should separate the government and enterprises, transform the government function and hand over the independence rights of production and operation of enterprises to enterprises and their legal representatives. To support the reform, we should establish and improve workers congress system and improve democracy and legal system with focus on the improvement of people's congress system, etc.

In the new stage of regarding economic construction as the central task and coordinating economic and social development, we should not only continue the democratic and scientific decision-making approaches adopted during the process of developing economy to solve the problems related to people's livelihood in the previous stage, and various related systems, but also further explore the methods to realize democracy that can support the improvement of people's livelihood during social construction so as to solve the problems related to people's social security and their sustainable development. During the process of leading social construction, we should solve the problems related to people's livelihood such as employment, housing, education, medical care, sustenance allowance, compensation for bereaved families and providing for the aged. These problems cannot be solved simply through handing over the independence rights to the people. They are actually in the functions and responsibilities of the government. Thus, after China entered the new stage of regarding economic construction as the central task and coordinating economic and social development, it is not a coincidence that the problems related to people's livelihood are becoming the increasingly prominent problems for governments of various levels. But we also notice that though the problems related to people's livelihood in this stage cannot be solved simply through handing over the independence rights to the people, we still cannot achieve our goals if governments of various levels do whatever they want without people's participation and supervision. Because of the particularity of the problems related to people's livelihood during the process of socialism construction, the relationship between people's livelihood and democracy will unavoidably emerge in new forms. Thus, the issue of "citizens' orderly political participation" was put forward naturally. So long as we pay attention to the motions and proposals of the NPC deputies and CPPCC members during the annual NPC and CPPCC sessions and the voices inside and outside the sessions, we can learn that people's expectations of democracy in the current stage are mainly the "four rights" for citizens to participate in political affairs in order, namely right to be informed, right to participate, right to be heard and right to oversee.

In any country, the realization of the democracy is connected to the realistic people's demands for livelihood and corresponding political demands of the country. China is now

at the new historical starting point. Politically, Chinese people not only need to have the independence right to develop economy, but also the citizen's right to be informed, right to participate, right to be heard and right to oversee. Realizing the rights in the above-mentioned four areas is the new requirements of China's democratic politics development in the current stage, as well as the new requirement of the development of human rights cause in the current stage. It is indispensable for promoting China's social construction, establishing and improving social security system, adhering to scientific development and realizing social harmony.

In a word, there are two points. The first is, against the background of the emergence of social construction, the requirements of respecting and protecting people's social rights such as social welfare and people's sustainable development also emerged; the second is, against the same background, the issue of respecting and protecting "citizens' orderly political participation," including citizen's right to be informed, right to participate, right to be heard and right to oversee, also emerged. These are the new requirements for China's human rights cause development put forward by the stage characteristics of China's social development.

Promoting Development of Human Rights Cause in the Process of Constructing a Society Ruled by Law

Against the background of the emergence of social construction, we should respect and protect people's social rights such as their social welfare and sustainable development, respect and protect "citizens' orderly political participation," enable the vast people to have the right to be informed, right to participate, right to be heard and right to oversee, which are necessary for their political participation. To do this, we should improve our legal system and further promote construction of a country ruled by law.

The Communist Party of China is a party holding the banner of Marxism, as well as a party struggling for democracy (human rights) and science. During the nearly 90 years of struggle to realize human rights and promote democracy, the Communist Party of China has experienced two great stages of revolutionary democracy and people's democracy respectively. In the stage of revolutionary democracy, we relied on the people to struggle for democracy and realize human rights through revolutionary struggles such as protests and strikes and even armed struggle. This stage was characterized by destroying reactionary rules and old authorities; in the stage of people's democracy, namely, in the stage when people are the masters of their country, we conducted long-term explorations, successful and unsuccessful, and finally realized that democracy should be institutionalized and legalized. Only through improving the socialist legal system and constructing a society ruled by law, can we really realize people's democracy and protect human rights.

During the process of promoting social construction with focus on people's livelihood

and establishing and improving social security system, we have a lot of work to do to ensure people to enjoy the social rights such as extensive social welfare and people's sustainable development, and important rights to participate in government decision making in order. One of the great things is legislation. This is not only the internal requirement of people's democracy and the realization of human rights, but also the requirement of special subtlety of solving the problems related to people's livelihood. We should pay attention to such a phenomenon: While talking about people's livelihood, some people often consciously or unconsciously interpret "people" in "people's livelihood" as "poor people," instead of as "all the people," even the pioneers who had made important contributions to China's prosperity and People's well-off in the process of reform and opening up included. During the process of solving problems related to people's livelihood through democracy, we should consider the interests and demands of the people in various fields. While researching social security experience of foreign countries, some experts have noticed that establishing social security system should take into consideration various factors that may influence social policies in a comprehensive way. For this purpose, we need to establish a comparatively complete legal system that can maintain subtle balance among wishes of various social groups on the basis of scientific researches. For instance, when the UK announced to have established a welfare state in 1948, their social security system has such features: nationwide security, covering all the fields; unified management by the government with the top authority being Department of Health and Social Security; social security funds coming from the state general tax; various welfare being set by the law so as to ensure equality and universality of social security. China's situation now is more complicated than that in the UK at that time. We should pay more attention to legal construction when we rely on the people to promote social construction with focus on the people's livelihood and establish and improve social security system.

China has formulated a series of laws of social security such as *Law of the People's Republic of China on the Protection of Rights and Interests of Women* and *Law of the People's Republic of China on the Protection of the Disabled Persons*. This is a great progress. However, China is now facing the new situation of regarding economic construction as the central task, coordinating economic and social development and promoting the development of social security cause in an all-round way, so more comprehensive and all-dimensional legislations are needed.

For this purpose, I suggest China should research and formulate two important laws: One is *Law of the People's Republic of China on the Political Participation of Citizens* and the other is *Law of the People's Republic of China on Social Security of Citizens*. The former should put its focus on legally confirming the "four rights," namely, citizens' right to be informed, right to participate, right to be heard and right to oversee, which

have been seriously put forward by the CPC Central Committee; the latter should clarify the objective tasks and guiding lines of China's social security system construction to standardize the formulation of social security laws of all dimensions and solve the problems that social security policies issued by different departments overlap and conflict with each other. The former law can clarify the subjects, impetus and realization methods of solving problems related to social security while the latter law can solve the problems related to the establishment of the social security system and the basic requirements of establishing the system.

In general, researching and formulating the two important laws can help improve the livelihood of more than one billion Chinese people and is conducive to the development of China's democracy and human rights cause. It is a great issue that can promote Chinese people's livelihood, China's democracy, human rights and law-based governance.

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The Value Choices of China's Human Rights Model

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The cause of China's human rights in contemporary China has developed rapidly and achieved great accomplishments. Everyone who lives in China has personal experiences about the development of human rights. Observers who seriously study the development of China can easily see this fact. Since the reform and opening up, China has undergone tremendous changes. In economy, China has changed from the planned economy to the market economy; in politics, it has constantly improved socialist democracy; in law, it has changed from rule of man to rule of law; in social culture, it has changed from an obligation-oriented society to a right-oriented society. These fundamental changes in China lead to the urgent needs of safeguarding human rights. The cause of safeguarding human rights in China has achieved a historic leap. The development of human rights has become an integral part of China's social transformation. Human rights in China have developed its own model. In fact, China's human rights model is the theoretical generalization of the experience of developing human rights in the era of social transformation of such a great developing country like China. China's human rights model has its unique understandings in the aspects of contents of human rights, the way of realizing human rights and the order of safeguarding human rights etc. Under the specific historic conditions of China, China has chosen "right, freedom, democracy and rule of law" as the fundamental values for the development of China's human rights, promoting China to a harmonious society.

I. Orientation of Freedom and Equality of China's Human Rights Model

Since the reform and opening up, the most significant and far-reaching change of China is the transformation from the planned economy to the market economy. Since 1979, China set out on the journey of market economy. In the beginning, China's reform was a market-oriented reform. The basic goal of reform was to establish a flexible and effective market mechanism, and make market play a key role in the aspects of allocating resources and regulating production. In 1992, the 14th National Congress of Communist Party of China officially put forward the goal of establishing socialist market economy system. So far, China has successfully established the basic framework of socialist market economy system. And more and more countries have recognized China's market economy status.

The research report of Chinese economy that was recently published by the Organization for Economic Co-operation and Development (OECD) reported that China has reached the basic requirements of market economy. Moreover, the market-oriented reform of China's economy is still ongoing continuously, and socialist market economy is still in the process of constantly improving.

Market economy requires developed awareness of rights. Under the circumstances of planned economy, the country is a unified economic unit, and each unit produces and distributes in accordance with national plans. In the context of state-owned economy, there are no strict right relations. Funds, equipment and products of a factory can be transferred to another factory, or even a factory can be merged into another one just by one order. Market economy establishes the dominant position of each economic unit, and each enterprise is the economic subject that manages independently and assumes sole responsibilities of its profits and losses, and pursues the maximum profits. Enterprises must clearly understand their rights, resolutely defend their rights, and maximize to realize their rights, so that they can achieve the goal of making profits. Otherwise, enterprises will lose comprehensively, and exit the market. The development of right relations in the field of economy, promotes the overall development of China's social right relations and awareness of rights. As we know, the market economy has greatly developed, and many aspects of social life have re-organized in accordance with the principles of market economy. Individuals are inevitably brought into market system, and entered the market as market subjects. Thus, individuals become the basic subject of rights. Everyone has the issues on how to protect and realize their rights. The development of China's market economy is also the development of China's social right relations and awareness of rights. Right relations and awareness of rights are very crucial to human rights. First of all, human rights are rights which are entitled to be possessed by everyone. Human rights are the product of highly developed right relations. If a society does not have right relations and awareness of rights, then how does it have the human rights which are the most universal form of rights?

Market economy also requires a certain degree of equality in the aspects of basic rights among various market subjects. Market economy is based on the principle of equivalent exchanges. Only equal market subjects can make equivalent exchanges. Enterprises should make equivalent exchanges, so do individuals. Human rights are the basic rights that are equally offered to each individual. These rights include inviolability of life and personal rights, the rights of protecting properties, and inviolability of housing rights and so on.

Market economy also requires basic freedom equally possessed by each market subject. Under the conditions of market economy, each market subject freely competes with each other and achieves maximum profits. Enterprises can not be restricted by other factors except for laws which maintain the order of competition. Individuals, as the market subjects, also

have the right of freely carrying out economic activities in the market. At the same time, free labors are also the basic conditions of maintaining the operation of market economy. Under the conditions of market economy, enterprises need to constantly hire a large number of labors who get rid of the restrictions of identities, household registrations and other attachment relations, so that they can achieve competitive advantages. The free movement of persons is a prerequisite for modern market economy. In the process of developing market economy, China adapts to the needs of market economy, expands the freedom of enterprises and individuals, and cancels a large number of restrictions, such as, restrictions for establishing enterprises, restrictions for operating activities of enterprises, restrictions for residents' migration, restrictions for individual choices of occupation and so forth.

These free and equal rights are some important human rights promoted by market economy. Market economy is one of the most essential factors of social development in contemporary China, and the foundation of China's social development, including the development of human rights.

II. Orientation of Democracy of China's Human Rights Model

Over the last 20 years, the history of China's reform and opening up was not only the history of economic reform and development, but also the history of comprehensive progress of politics and the constant development of democracy and freedom. China's politics is becoming more and more open. Deputies to the Peoples Congresses of China's county and township level are elected directly by voters. The number of people who possess the right to vote and to be elected accounts for the 99% of the citizens at 18 years of age or above, the voter turnout is about 90%. In accordance with China's actual situations, deputies to the people's congress (NPC) at or above the county level are indirectly elected at current stage, that is, deputies to the People's Congress of higher levels are elected by people' congress of next lower level. Direct and indirect elections apply for multi-candidate elections in accordance with laws. System of people's congress has been improved constantly, and the right of legislation, the right of supervision, the right of personnel appointment and removal, and the right of making decisions on major issues of people's congress and its Standing Committee have been fully realized. The Chinese government has realized orderly and legal changing the term of office through the people's congress which is elected by voters. The framework of China's political democracy has been established. The Chinese government has put forward the task of constantly improving social democracy. First of all, the government develops the grass-rooted democracy. Direct elections of Villagers' Committee throughout the country have been carried out. The majority provinces, autonomous regions and municipalities have generally completed the general elections of Villagers' Committee for 5 or 6 times. Grass-rooted democracy has been stabilized in rural areas, and the basic pattern

of rural management is democratic election, management, decision-making and supervision.

The development of political democracy will inevitably promote the development of human rights. Democracy itself is a sort of human rights. Participating in state management or relevant elections is a kind of basic human rights. Meanwhile, the development of political democracy also promotes the broader development of human rights. Democracy also requires giving the equal rights and basic freedom to all the members of the society. As with the market economy, political democracy is the basic driving force of the development of human rights in contemporary China.

Political democracy must develop synchronously with personal and social freedom. To practice democracy, each voter must possess some basic rights: each person is an independent and equal individual, and has their own dignity and value, a series of personal rights that shall not be violated, and a wide range of freedoms, including freedom of speech, freedom of belief, freedom of thought, freedom of expression, and personal freedom etc. Safeguarding political democracy should combine personal freedom with social freedom. Individuals and societies that possess fundamental freedoms can provide appropriate growing space for political democracy. Since the reform and opening up, China's society has become much freer, and people possess more and more freedoms, which are corresponding with the development of political democracy. China has abolished many social restrictions on limiting individual freedoms; therefore, individuals are free to choose their residential places, their occupations, their beliefs, and express their opinions freely. Before the reform and opening up, Chinese people were strictly controlled by household registrations, and very difficult to change residential places in the aspect of freedom of migration. At present, China has become a highly mobile country. A great number of population flows among various regions each year, and the basic flowing direction is flowing from inland to the coastal areas with developed economy, from rural areas to urban areas. In the aspect of the freedom of choosing occupations, individuals' jobs were distributed by our country and they could not choose their jobs according to their interests over 20 years ago. Changing their jobs was almost impossible. Nowadays, everyone chooses their own occupations. Changing jobs and careers has become a common phenomenon. The existence of a great number of employment agencies is the proof. In the aspect of expressing opinions freely, the space of freedom of speech in China is becoming larger and larger, and the forbidden zone of freedom of speech is becoming smaller and smaller. Today, all speeches can be free to express except those may violate Constitution and other laws. Compared to the situation that "ten thousand horses stood mute" and the whole nation had only one voice during the period of Cultural Revolution, today's space for freedom of speech has been enlarged many times. All kinds of views can be expressed without restrictions in the fields of academics, society, culture and art, entertainment and sports. Everyday we can read various views on different media.

III. Orientation of Rule of Law of China's Human Rights Model

A country under the rule of law is an important part of building a modern society in China. Since the reform and opening up, China has paid particular attention to legal system construction and strived to establish a legal system that suits for China's national conditions. National People's Congress (NPC) comprehensively revised the Constitution in 1982, and later approved four amendments to the Constitution. NPC and its Standing Committee have enacted more than 200 laws that are currently in force, and made over 200 decisions on legal issues. Local People's Congress and its Standing Committee have enacted over 7,500 local regulations that are currently in force, and the People's Congress of national autonomous regions has enacted more than 600 autonomous regulations and separate regulations. China has constantly reformed and improved the judicial system and judicial procedures in order to achieve the principle of all people are equal before the law. China has reformed the Criminal Procedure Law, and established a principle of "statutory crimes and presumption of innocence;" therefore, China has implemented a system of public trial. Except some cases that shall not apply for public trial according to laws, all cases apply for public trial, that is, public hearing, public gathering evidences, and public confrontation, and public sentencing. Over the last 30 years, China grew out of nothing, and developed a lawyers' system with Chinese characteristics. The establishment and improvement of the lawyers' system is enable for lawyers to effectively apply for legal approaches to safeguard the legitimate rights of the parties, implement laws correctly, and maintain the fairness and justice of our society. China has also put forward the task of establishing a socialist country under the rule of law, and made a specific stipulation that our country should basically establish a legal system in accordance with the socialist market economy till the year of 2020.

The development of legal construction plays a direct role in promoting human rights protection. Many human rights are related to governmental enforcement actions, and lack of standards of governmental enforcement is an important reason for human rights violations. For instance, the arbitrary deprivation of personal liberty, extorted confessions by torture, abuse of prisoners, and so on. With the improvement of rule of law, such violations of human rights will be reduced. In fact, the Chinese government has launched a promotion of law-based administration and inspection activities across the country, and corrected numerous violations of human rights. Meanwhile, legal construction itself has many elements that belong to human rights. The fact that all people are equal before the law is not only a legal principle, but also a piece of basic human rights. The important contents of human rights also include obtaining a fair trial from the court, and getting help from lawyers to defend themselves etc. In addition, laws can provide relief to the victims under the conditions of violating human rights. Developed rule of law can uphold justice and deter offenders by

punishing the phenomena of violating human rights.

The development of legal construction in China is an important reason why the level of safeguarding human rights in China is constantly increasing. The development of rule of law is closely linked to the level of safeguarding human rights.

IV. Orientation of Rights of China's Human Rights Model

It's a difficult course for China to march toward modern society. China has to get rid of various cultural and social constraints which have a history of over thousands of years, comprehensively restructure our society, and create a brand-new psychological structure. For the current Chinese society, this process is actually the transformation from an obligation-oriented society to a right-oriented society.

Since ancient times, China has been an obligation-oriented society. It was obligations but rights that were linked to individuals in Chinese society. The society did not stipulate the rights possessed by individuals, and individuals could not require and defend their rights in accordance with laws. However, our society stipulated a series of obligations for individuals, and completed the social integration and the distribution of benefits through mutually fulfilling their obligations. For example, loving fathers, filial sons, wise emperors, and faithful ministers were the obligations for fathers, sons, emperors and ministers in ancient China. Fathers and sons respectively achieved their interests by fulfilling their own obligations. The key was that sons' obtaining fathers' care was stipulated not as a right of sons' but an obligation of fathers'. Similarly, sons' filial piety was stipulated not as a right of fathers' but an obligation of sons'. This obligation was not only a moral requirement, but also highly coercive. Chinese society forced individuals to fulfill basic obligations to others, just as modern society forces people to respect and admit others' rights. The reason why this phenomenon occurs entirely due to Chinese society does not treat individuals but families, villages or other collectives as the basic unit of our society.

The features of obligation-oriented society clearly reflected the concept of "Li" (courtesy) which held the dominant position in Chinese society. China's traditional "Li" (courtesy) was not only the provisions of common courtesy, but also the strict provisions on the social and political roles and norms of behaviors of individuals. "Li" (courtesy) only stipulated the obligations in dealing with others, but did not mention the return from others, that is, his rights. Of course, in a society that everyone followed the rules of "Li" (courtesy), one fulfilled his obligations of "Li" (courtesy) to others, and others would do the same. Thus, the interests' relationship between each other got effectively adjusted. Westerners gave personal interests through the form of "rights;" however, China gave individuals' obligations through following the rules of "Li" (courtesy). However, obtaining obligations fulfilled by others did not mean to get personal rights. For example, "loving fathers and filial sons" is

a basic requirement of mutual obligation, but obtaining sons' filial piety or fathers' care was never stipulated as fathers' or sons' rights. If sons were unfilial or fathers not loving, it would not mean sons violate fathers' rights or fathers violate sons' rights, but sons or fathers violated "Li" (courtesy) which was issued in the name of overall interests of the society, and a social provision with common and long-standing dignity. That is, if sons did not fulfill the obligation of filial piety, then he would violate the interests of the overall society. The punishment to disrespectful sons was not to restore the status quo according to the extent of damage to fathers' rights, but to impose penalties in accordance with the extent of damage to ethical principles of the overall society.

This obligation-oriented society does not emphasize personal rights, of course, not even human rights. Modern society is a society based on the right relations among individuals, which can be called a right-oriented society. In this society, individuals who get rid of all the limits and constraints, free from the restrictions of family, regions, guilds, identities and other factors, and separate like an atom, become the basic units of society, subjects of social behaviors and bearers of responsibilities. Adults (and minors in a certain degree) in legal senses whose existences separate from others, have their own independent interests, judgment, volition, behavioral competence, and responsibility. They put personal existence and development as the center and plan their own actions. Numerous isolated individuals pursue their own personal interests and form a society by contracts. Modern society integrates the isolated and atomic individuals one by one into a society through right relations. Rights actually draw a line between "yours" and "mine." The basic requirement of modern society is to adjust the interests' relationship among social members through the division of rights. Under the circumstances of not violating others' rights, individuals can pursue their own interests. As long as everyone focuses on pursuing their own interests, and respects others' rights simultaneously, so the society can run smoothly. This principle not only applies for the relationships among communities which are consisted of individuals, but also the relationship between individuals and various communities.

China is transforming into a right-oriented modern society, which inevitably leads to the development of human rights. The foundation of a right-oriented society is the equality between individuals and all the subjects of rights. All people have the basic freedoms under the law, which is a basic requirement of right-oriented societies. China is firmly establishing various modern right relations based on individuals and other subjects of rights; therefore, not surprisingly, China will vigorously develop human rights and improve the level of safeguarding human rights.

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Human Rights Mainstreaming in China

Liu Huawen
China

Under the background of countries being impacted by the comprehensive and profound international financial crisis, the rapid economic development pace of China has impressed the world. However, China's development is all-round and it is beyond the domain of economic development. In this respect, the concept of "scientific development" is a core concept in governing China, a developing giant. The author holds the view that human rights mainstreaming is a necessary part of China's scientific development, a new phenomenon as well as an important goal that deserves long-term attention and promotion.

I. Human Rights Mainstreaming is a New Trend of Social Development

Human rights mainstreaming is a new trend when international human rights campaign has developed into certain historical phase. It is not something which exists for a long time. For instance, activities aiming to protect labor rights which were leaded by International Labor Organization, founded in 1919, were earlier than the foundation date of UN; and it played a significant role in this field. However, for a long time, International Labor Organization did not use "human rights" discourse and it just stressed social fairness and justice as the purpose and mission. It placed high value on the technicality and operability of relevant issues and avoided their political nature and sensitivity. In recent years, International Labor Organization has used human rights discourse on a large and spectacular scale.[1]

Especially after the Cold War, the differences and contradiction on human rights between eastern and western nations have been fairly relieved. Technology, especially the development and popularity of Internet as well as the ever-increasingly active Non-Governmental Organizations (NGOs), greatly helps international human rights campaign to act powerfully. Human rights law has gained great development in some universal international organizations, such as UN and some regional international organizations of

1. In modern international law, although there are differences between international labor legislation and international human rights law, the rights of protecting working issues are complementary. Some scholars said, "*This relatively developed labor rights legalization is to a large extent, contribution of objective law (international labor legislation) instead of subjective law (international human rights law).*" Asbjorn Eide, Catarina Krause and Allan Rosas edited, *Economic, Social Cultural Rights*, A Textbook, Martinus Nijhoff Publishers, second revised edition, 2001, p. 225.

Europe, Africa and Latin America, etc. Promoting and protecting human rights have been the common goal of every nation. Human rights mainstreaming has got acknowledgement from international organizations, domestic governments and NGOs; it has been a promotion goal of the international community.

Since China's foundation in 1949, the Chinese government has attached importance to the international human rights standards[1]. However, with the Cold War's coming, an era full of ideological contradiction between eastern and western nations, human rights discourse was not used for certain period. Since the late stage of 1980s, human rights research has been normalized and got rapid development; human rights discourse has promptly become a mainstream discourse.

Human rights mainstreaming in the social development domain means that to respect and protect human rights have been the internal goal and value of social development, as well as that human rights become an important perspective and goal of government legislation, decision and work. This is an important part of national and regional scientific development. It is a tool, a goal and an important index for measuring the political and social civilization degree.

The Chinese government is stressing "scientific outlook on development." What is scientific development? The author holds that its connotation is very rich and in economic field, it means region-balanced, structure-optimized, high-quality, highly resource-efficiency and environment-friendly development instead of region-unbalanced, simply number-increasing, highly resource-consuming and environment-unfriendly development; in social field, it also has abundant connotation and it includes narrowing the gap between the rich and the poor of different regions and classes, promoting the fairness in distribution, realizing human beings' development with dignity, which are important contents of human rights principles and rules. Human rights mainstreaming can be regarded as an important part of scientific development.

II. Human Rights Mainstreaming Has Important Achievements in China

Since China's foundation in 1949, the concept of "human rights" was not used in *Constitution of the People's Republic of China* and laws for certain period; and ideologically, it was criticized for being something of capitalist class. After the reform and opening up, China understands and treats human rights issue from a new perspective. On November 1, 1991, the State Council Information Office published a white paper, *Human Rights in China*. It was the first official document on the theme of human rights. Its historical meaning lay

1. For instance, in 1950, the Chinese government commented on the occupation of Tokyo, Japan by US and stated that it went against "the freedom of speech and thought and the respect for basic human rights." Cited from: Andrew J. Nathan and Robert S. Ross, *The Great Wall and the Empty Fortress: China's Search for Security*, W. W. Norton & Company, 1997, p. 180.

in breaking the "left" traditional view and forbidden zone; it named human rights "a great noun" and stressed the full realization of human rights was "the ideal which human beings have pursued for a long time," "a lofty goal that is demanded by Chinese socialism" and "a long-term historic task for Chinese people and Chinese government." It was the first time for China to positively acknowledge the status of the concept of human rights in Chinese socialist political development in the form of government documents, which held the banner of human rights with perfect assurance.[1]

In 2004, China amended *Constitution of the People's Republic of China* and stipulated in it "the state respects and protects human rights," which has set a solid fundamental law basis for further development of human rights cause. In fact, there are contents of human rights in every *Constitution* since the foundation of China in 1949. Yet the discourse of human rights is not used. Therefore, "incorporating human rights into the *Constitution*" indicates that it is the first time to write the concept of human rights into *Constitution of the People's Republic of China* and especially, it shows the general attitude toward human rights of China.[2]

In recent years, the scientific development which advocates the idea of putting people first by the Chinese government has provided important policy basis for the drawing up of this Plan. The protection of human rights has been written into the *Outline of the Eleventh Five-Year Plan for National Economic and Social Development of China*. Meanwhile, it has been written into the *Constitution of the Communist Party of China* and the reports of the Fifteenth, Sixteenth and Seventeenth National Congress of the Communist Party of China.

In 1933, the World Conference on Human Rights held in Vienna passed *Vienna Declaration and Programme of Action* and suggested every member state to consider drawing up a national action plan, which helped countries to define the steps that should be taken to promote and protect human rights. After that, 27 countries, including Australia, have drawn up more than 30 *National Human Rights Action Plans*.

On April 13, 2009, after being approved by the State Council, the State Council Information Office published the *National Human Rights Action Plan of China (2009-2010)*. It is the first time for China to draw up a national plan on the theme of human rights. It is a historic breakthrough and a milestone in the development process of China's human rights cause. The author holds the view that this Plan is an important sign of human rights mainstreaming at government level. It means that every governmental department

1. Dong Yunhu, Chang Jian (ed.): *The 60 Years of China's Human Rights Construction*, Jiangxi People's Publishing House, 2009 edition, p. 26.

2. Xu Xianming: *What Do Constitution Amendment Clauses Amend*, recorded in *"Writing Human Rights into Constitution" and Human Rights Legal Protection*, China Society for Human Rights Studies (ed.), Tuanjie Press, 2006 edition, p. 47.

should adopt examination and supervision from the perspective of human rights as well as integration and coordination are necessary from the perspective of human rights protection. In other words, various jobs of governmental departments are not only related to human rights, but also to be brought into the perspective of human rights, working for promoting human rights consciously.

Since the release of the first human rights white paper, the State Council Information Office has published approximately 30 white papers about human rights, which have recorded and presented the development of China's human rights cause in details and vividly. If we say that human rights white papers focus on summarizing and announcing and they are some sorts of publicity, human rights action plans focus on the governmental plans and actions. Various government departments are involved in and guided by action plans in their activities in the field of human rights. We can say that from human rights white papers to human rights action plans, it is a new practice of Chinese government releasing authoritative documents of human rights and it is a substantial leap.

Bill Barker is an expert from Australia who is named "the father of national human rights action plan" by the academic community. He once facilitated UN to pass the documents about national human rights action plans in the international community at the early stage. He commented on the advantages of these plans: "it can promote more focused political commitment to human rights objective; it can integrate human rights promotion throughout government administration, including in areas not normally considered as part of the human rights system, and it involves acceptance that it is appropriate to allocate significant resources to human rights activities. Though these mechanism, substantial human rights objectives may more effectively be achieved."[1]

The drafting and conduction of *National Human Rights Action Plan of China* has obvious promotion effects on human rights mainstreaming. Various governmental departments and NGOs, experts and scholars have been invited to attend the discussion and drafting of this Plan. The Chinese government has established a special mechanism, Joint Meeting Mechanism for National Human Rights Action Plan, which was initiated by the State Council Information Office and the Ministry of Foreign Affairs and had 53 member organizations. In order to absorb suggestions from all circles and NGOs, joint meetings were held on many occasions. Several symposia were convened with representatives from over 20 organizations, such as China Law Society, All-China Lawyers' Association, China Legal Aid Foundation, Chinese Society of Education, China Women's Development Foundation, China Foundation for Poverty Alleviation and China Foundation for Disabled Persons, etc. to solicit suggestions for revisions through thorough discussions among social and non-governmental

1. Bill Barker, *National Human Rights Action Plans-Beyond Rhetoric*, quoted from web page: www.sweden.gov.se/content/1/c6/11/49/17/1e33ae91.pdf, visited on December 11th, 2009.

organizations, universities, colleges, research institutions and other social sectors. After the participation and common efforts of over 80 organizations, repeated discussion and modification, on the basis of 10 amendments, the final plan draft to be sent to the State Council was formed.

By the end of 2009, the Joint Meeting Mechanism for National Human Rights Action Plan has demanded relevant departments and organizations to report on the implementation since the release of this Action Plan and organized relevant organizations, experts and scholars to conduct research and studies on this. On this basis, the Joint Meeting Mechanism has called a three-day mid-term evaluation meeting on the implementation of *National Human Rights Action Plan of China (2009-2010)*. More than 200 officials from more than 50 central government departments and state organs, together with experts and scholars, attended the meeting. 47 superintendents delivered speeches on the Action Plan implementation of their own departments and organizations in the meeting. Comprehensive summaries on the implementation were drawn; serious analyses which existed in the implementation process were conducted; suggestions and advice for further implementation in the next phase were proposed and corresponding deployments were made. From the perspective of the mid-term evaluation, by now, the implementation of Human Rights Action Plan is good and relatively good. All targets and tasks set by the Action Plan were fulfilled on time. For most of the targets and tasks expected to be finished in two years, 50%, or even 65% or so, have been accomplished so far. [1]

In the author's opinion, the implementation of the Plan is a systematic project which is like the drafting. It cannot be finished by a single government department and it needs coordination and integration of multi-parties and multi-forces. The official supervision and evaluation are important; the supervision and evaluation which are measured by the Plan from all circles, including media and civil societies, are of much more importance. Plan is an important criterion for citizens and social organizations to advocate human rights as well as supervise and evaluate government work. To this extent, the Plan promotes human rights mainstreaming comprehensively.

III. The Development Outlook of Human Rights Mainstreaming in China

Firstly, government is the leading force to promote human rights mainstreaming. The international standards of human rights are the common goals promoted by the international community. Realizing these goals demands governments to choose the effective development

1. Referred to the speech delivered by Wang Chen, Minister in charge of the State Council Information Office on Dec. 3rd, 2009, on the Mid-term Evaluation Meeting of the Implementation of the *National Human Rights Action Plan of China (2009-2010)*. Cited from China.com.cn: http://www.china.com.cn/policy/txt/2009-12/04/content_19010431.htm, visited on December 11th, 2009.

models and ways in line with their national conditions. Government should take prior responsibilities for respecting, protecting and promoting human rights both in international human rights law and domestic law.

The emerging of China[1] in the international stage and its high value on human rights make it a new force in international human rights campaign. It actively facilitates the healthy development of international human rights mainstreaming. Domestically, human rights mainstreaming is in rising development. In 2009, the Chinese government released *National Human Rights Action Plan of China* under the attention at home and abroad. It was a substantial step to promote the development human rights. We have enough reasons to hold the view that meanwhile, the domestic human rights cause is stepping into a new phase and a new stage. What deserves our attention is that it is China's first national human rights action plan and it will gather experience for the future drawing up of national human rights action plan. The author believes that it is a long-term job. In the future, the drawing up and implementation of more national human rights action plans will have more shining points which deserve expectation.

Secondly, the sound interaction between human rights and rule of law will facilitate human rights mainstreaming to walk further. Currently, the socialist legal system with Chinese characteristics has taken shape basically. Human rights standards have set direction for legislation and law can provide human rights protection with solid institutional basis. International human rights treaties that China ratified or acceded in have exerted important influence on China's legislation. China's legislatures and legislators have also referred to those international standards of treaties that do not get approval of China when they conduct relevant legislation. The strengthening of human rights protection at the legislation level is just the first step. The operation and conduction of law are the real processes to promote and realize human rights, which are the direction and key to China's future efforts.

Thirdly, long-term and unremitting efforts of human rights mainstreaming in the cultural and social field are needed. Human rights mainstreaming is an inevitable and new trend in China which develops rapidly. There are many opportunities as well as many challenges. As to the formation of ideology and ideas, the establishment of rules is much easier. Human rights mainstreaming is not only to bring human rights into our society and present them at the rule level, but also to foster the culture of respecting and protecting

1. According to the report of Reuters on Dec. 7th, 2009, "the emerging of China" has been the hottest news over the nearly 10 years. According to the statistics of citation times on Internet and in blogs, including relevant statistics of 50,000 paper media and websites of e-media, statistical data related to "the emerging of China" took a leading role, up 400% over the second role, "Iraqi War" and "9/11 attack" ranking the third place. Even we doubt its scientific nature, undoubtedly, in the international community and people's thought, China's international status is rising and its influence is expanding. This should include China's ever-increasingly active participation into the international human rights mechanism and its growing contribution.

human rights in the whole Chinese society. On the one hand, we should inherit and carry forward the good traditions of the Chinese nation; on the other hand, we should pay attention to absorbing and learning from the consensus and good experience of international community. The model of government leading and society taking part in is an indispensable model. The human rights education for government officials, social workers, the public as well as students of universities, colleges, middle schools and primary schools is also of importance. The participation of media is necessary.

In a word, human rights mainstreaming has a sound momentum in China. Meanwhile, it has a long way to go.

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Legal Construction of Human Rights in China and Comparison with EU

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1. Introduction

The conception of human rights has not been defined yet by Chinese Constitution and laws. There is no special court of human rights in China such as European Court of Human Rights. How to understand human rights in China partially depends on legal construction, i.e., interpretation of human rights from legal normative perspectives. This paper intends to make a preliminary legal construction of human rights based on China's Constitution, statutes, judicial decisions and obligations of human rights conventions, and to compare the conception of human rights in Europe in the hope to promote mutual understanding the differences and commonalities between China and Europe regarding human rights.

2. Constitutional Construction of Human Rights in China

The People's Republic of China made the first Constitution in 1954[1], which provides the protection of citizen rights by the Articles from 85 to 99, including the civil and political rights such as right to vote and stand for election, freedom of speech, of assembly, of association, of procession and of demonstration, freedom of religious belief, freedom of personal inviolability, freedom of residential inviolability and privacy of personal communications, freedom of movement, the economic, social and cultural rights such as rights to work and to rest as a worker, right to material assistance as an old, ill or disabled person, right to receive education, right against discrimination on gender or age. In comparison with the first Constitution of 1954, the current Constitution of 1982[2] remains essentially unchanged in regard of protection for above citizen rights, but by the Fourth Amendment to Constitution in 2004,[3] Article 33 added the new paragraph "the State respects

1. *Constitution of the People's Republic of China* [*Zhonghua Renmin Gongheguo Xianfa*] (Adopted on 20 September 1954 at the First Session of the First National People's Congress).
2. Adopted on 4 December 1982 at the Fifth Session of the Fifth National People's Congress and amended in 1988, 1993, 1999 and 2004 respectively.
3. Amendment to *Constitution of the People's Republic of China* [*Zhonghua Renmin Gongheguo Xianfa Xiuzheng'an*] (Adopted at the Second Session of the Tenth National People's Congress and promulgated for implementation by the Announcement of the National People's Congress on March 14, 2004), http://www.npc.gov.cn/englishnpc/Constitution/node_2826.htm.

and preserves human rights" with no definition of human rights or clarification of two terms of citizen rights and human rights. It is understood that there are no essential differences between them because the constitutional provisions defining the citizen rights have no changes and the amendment only imposes the duty to the State, i.e., Chinese legislators, governments and judicial organs at national and local levels to protect human rights.

In accordance with Chinese Constitution and laws, the conception "citizen" means a person holding Chinese nationality (Art.33.1 of 1982 constitution). Who are Chinese nationals? In principle, any person born in China whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. (Art. 4 of Nationality Law[1]) Any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality. (Art. 5 of Nationality Law) Additionally, any foreigner or stateless person may be naturalized upon meeting statuary requirements. It is clear that Chinese citizen rights are universal in the sense of any Chinese nationals with equal citizen rights no matter whether lives in China or abroad.

Why dose the Fourth Amendment to Constitution add the new paragraph "the State respects and preserves human rights" if it is assumed that there are no differences between the citizen rights and human rights in China? The possible answer is that the Constitutional Amendment is aimed at imposing the clearer responsibilities on all state branches to protect citizen rights, which is defined as a general principle that "the States respects and preserves human rights," following the principle of equal citizen rights before law. But, the answer may not be satisfying because Chinese Constitution before 2004 Amendment has already provided Chinese State with responsibilities such as "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," (Art. 36.2) and "state protects normal religious activities." (Art. 36.3) It could be constructed that, in principle, the conception of human rights has broader coverage than that of citizen rights if it is taken from the perspective of *Universal Declaration of Human Rights*.[2] The newly added paragraph 3 of Article 33 seems a political declaration to world that China determines to protect human rights under current Constitution and to implement international conventions

1. *Nationality Law of the People's Republic of China* [*Zhonghua Renmin Gongheguo Guoji Fa*] (Adopted at the Third Session of the Fifth National People's Congress, promulgated by Order No.8 of the Chairman of the Standing Committee of the National People's Congress on and effective as of September 10, 1980) http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384056.htm. Note: website <http://www.npc.gov.cn /englishnpc> will be omitted for Chinese laws recited in this paper hereafter.

2. G.A. Res. 217A, U.N. GAOR, 3rd Sess., Pt. I, Resolutions, at 71, U.N. Doc. A810 (1948).

of human rights for which China is a contracting party.

It shall be noted that China contributed the draft of *Universal Declaration of Human Rights* in 1947, including the Article 1 with a key word "conscience" for the nature of human rights, i.e., human beings endowed with reason and conscience, therefore they should be act towards on another in a spirit of brotherhood.[1] The ancient Chinese philosophy, Confucianism believes that all human beings have inherent conscience to help each other ("The feeling of commiseration implies the principle of benevolence," *The Works of Mencius*).[2] In recent year, the constitutional policy "to treat human beings as priority" (*Yi Ren Wei Ben*) has been taken to protect human rights, to improve environmental conditions for better living in China. In some degree, it is revival of Confucianism, which promotes the adoption of new paragraph Article 33.3 of Constitution.

Chinese contributions to *Universal Declaration of Human Rights* indicates some linkages between European idea of human rights originated from Greco-Roman philosophies and Chinese idea of that ascends partially to Confucianism. It might be helpful for us to discus the recent development of Chinese Constitution for human rights protection in considering no obstacle of different civilizations. Chinese civilizations based on Confucianism dose not reject the idea of human rights. Internally, we shall encourage further amendment of Chinese Constitution to include more coverage of human rights while, externally having more dialogues with European counterparts.

3. Statuary Construction of Human Rights in China

There are more than a dozen of Chinese laws in respect of human rights. Regarding civil and political rights, Electoral Law[3] provides that all Chinese citizens who have reached the age of 18 shall have the right to vote and stand for election, regardless of ethnic status, race, sex, occupation, family background, religious belief, education, property status or length of residence. (Art. 3) The election of deputies to the national and local congresses shall be by secret ballot (Art. 36) in order to protect the rights to vote. The national election is held once every four years. It is Chinese political democracy that by election of deputies to national and local people's congress, the people's deputies are responsible to select leadership at all levels. But, the power to nominate leadership belongs to Communist Party of China (CPC). It is the

1. See *Universal Declaration of Human Rights: A Common Standard of Achievement* (edited by Gudmundur Alfredsson and Asbjorn Eide), Chinese version, Sichuan Prople's Publishing House, 1999. pp. 43-44. It is disclosed that Mr. Penchun ZHANG, Chinese Member of Drafting Committee, contributed the word "conscience" to the Article 1 of Declaration.

2. *Selected Readings from Famous Chinese Philosophers with Annotations and English Translation* (General editor, SHI Jun), Vol. 1. People's University of China Press, 1995, p. 109.

3. *Electoral Law of the National People's Congress and Local People's Congresses of the People's Republic of China* [*Zhonghua Renmin Gongheguo Renmin Daibiao Xuanju Fa*] (Adopted at the Second Session of the Fifth National People's Congress on July 1, 1979 and the fifth amendment adopted on March 14, 2010).

general principle of CPC leadership under the Constitution (Preamble). Different countries may have different democratic regimes. It is true that all Chinese citizens do have rights to vote and stand for election under CPC leadership. How to improve the process of nominating leadership is the task of political reform in China, which shall not be confused with the issue of right to vote. The right to vote must be protected. The political reform must be taken to have a more transparent process of nominating leadership in China.

Law of Assemblies, Processions and Demonstrations[1] provides that the citizens' exercise of their right to assembly, procession and demonstration shall be safeguarded by the people's governments at all levels in accordance with the provisions of this Law. (Art. 3) For the holding of an assembly, a procession or a demonstration, application must be made to and permission obtained from the competent authorities in accordance with the provisions of this Law. (Art. 7) It means that no assembly, procession or demonstration would be held lawfully in China without approval of the competent authorities, i.e., the public security organs. It is a general practice elsewhere in the world to regulate the assembly, procession and demonstration. But it is a problem how to provide judicial review on the final rejection of public security organs in China. *Law of Assemblies, Processions and Demonstrations* provides that the final rejection shall be made by the people's government at the same level, (Art. 13) i.e., the administrative organ. In accordance with the Administrative Procedure Law,[2] the people's courts have no jurisdiction to review any specific administrative act that shall, as provided by law, be finally decided by an administrative organ. (Art. 12.4) Therefore, no judicial review could be taken for final rejection on assembly, procession and demonstration. Of course, it is alternative to have an independent administrative organ at higher level to review the final rejection in this regard. But, "the people's government," e.g., a municipal government, usually dose not change the decision of its subsidiary organ of public security in China. It would be better to have a judicial review for protection of rights to assembly, procession and demonstration.

Trade Union Law[3] provides that all manual and mental workers in enterprises, institutions and government departments within the territory of China who rely on wages or salaries as their main source of income, irrespective of their nationality, race, sex,

1. *Law of the People's Republic of China on Assemblies, Processions and Demonstrations* [*Zhonghua Renmin Gongheguo Jihui, Youxing He Shiwei Fa]* (Adopted at the Tenth Meeting of the Standing Committee of the Seventh National People's Congress on and promulgated by Order No.20 of the President of the People's Republic of China on October 31, 1989)

2. *Administrative Procedure Law of the People's Republic of China* [*Zhonghua Renmin Gongheguo Xingzheng Susong Fa*] (Adopted at the Second Session of the Seventh National People's Congress and promulgated by Order No.16 of the President of the People's Republic of China on April 4, 1989)

3. *Trade Union Law of the People's Republic of China* [*Zhonghua Renmin Gongheguo Gonghui Fa*] (Adopted at the Fifth Session of the Seventh National People's Congress on April 3, 1992 and promulgated by Order No.57 of the President of the People's Republic of China on April 3, 1992)

occupation, religious belief or educational background, have the right to organize or join trade unions according to law. No organizations or individuals shall obstruct or restrict them. (Art. 3) Trade union is an association of workers. In constitutional principle, Chinese citizen has right and freedom of association. But, the problem is that there is no law of association in China so far. How to organize a trade union in China? In accordance with Trade Union Law, trade unions are mass organizations of the working class formed by the workers and staff members on a voluntary basis. The All-China Federation of Trade Unions and all the trade union organizations under it represent the interests of the workers and staff members and safeguard the legitimate rights and interests of the workers and staff members according to law. (Art. 2) There are no trade unions associated outside of the All-China Federation of Trade Union, which is the unified national organization. It seems that Chinese citizens have right to be member of this Trade Union, but it is virtually impossible to organize a free trade union outside All-China Federation of Trade Union. It is the same situation for any political association to be established outside CPC and existing Non-CPC democratic parties[1]. Therefore, the problem is not only for trade union, but for any political association in China. China must have a law of association so as to protect the freedom of association as human right under the law.

Regarding economic, social and cultural rights, there are more Chinese laws to implement Constitution, in particular, to protect the citizen rights to work (Labor Law,[2] Labor Contract Law, [3]and Law on Promotion of Employment[4]). Under these laws, Laborers shall have equal right to employment and choice of occupation, the right to remuneration for labor, to rest and vacations, to protection of occupational safety and health, to training in vocational skills, to social insurance and welfare, to submission of labor disputes for settlement and other rights relating to labor stipulated by law (Art. 3 of Labor Law), and the labor contracts shall be concluded in adherence to the principles of lawfulness, fairness, equality, voluntariness, consensus through consultation, and good faith (Art. 3 of Labor Contract Law). The workers enjoy the right to employment on an equal footing and to choice

1. Eight non-CPC parties (year of establishment): The Revolutionary Committee of the Chinese Kuomintang (1948); The China Democratic League(1941); The China Democratic National Construction Association (1945); The China Association for Promoting Democracy (1945); The Chinese Peasants and Workers Democratic Party (1930); The China Zhi Gong Party (1925); The Jiu San Society (1946); The Taiwan Democratic Self-government League (1947). All of them were established before the founding of People's Republic of China, therefore, it is not issue to be organized under law of association. Actually, no new non-CPC party has been associated after the founding of People's Republic of China.

2. *Labour Law of the People's Republic of China* [*Zhonghua Renmin Gongheguo Laodong Fa*] (Adopted at the Eighth Meeting of the Standing Committee of the Eighth National People's Congress on July 5, 1994)

3. *Labor Contract Law of the People's Republic of China* [*Zhonghua Renmin Gongheguo Laodong Hetong Fa*] (Adopted at the 28th Meeting of the Standing Committee of the Tenth National People's Congress on June 29, 2007)

4. *Law of the People's Republic of China on Promotion of Employment* [*Zhonghua Renmin Gongheguo Cujin Jiuye Fa]* (Adopted at the 29th Meeting of the Standing Committee of the Tenth National People's Congress on August 30, 2007)

of jobs on their own initiative in accordance with law. In seeking employment, the workers shall not be subject to discrimination because of their ethnic backgrounds, races, gender, religious beliefs, etc. (Art. 3 of Law on Promotion of Employment) It is greatly stressed that Chinese citizens shall have equal rights to work. But, the problem is that the labor contract shall be concluded by employee and employer. Whether the employer is willing to recruit a worker depends on many elements such as worker's professional skills and educational background, the needs of positions of employer. The equal right to work dose not guarantee each citizen to be employed. In accordance with the Law on Promotion of Employment, the State lays great stress on employment increase in economic and social development, implements a proactive employment policy, and upholds the guideline under which workers keep the initiative in their own hands when choosing jobs, employment is regulated by the market, and the government promotes employment, in order to increase employment through multiple channels (Art. 2 of Law on Promotion of Employment). Government shall promote increase of employment, but could not guarantee everyone with employment.[1] It is same elsewhere in the world.

Regarding right against discrimination and protection for women, children, elderly, and disabled person, China has made Law on the Protection of Rights and Interests of Women,[2] Law on Maternal and Infant Health Care,[3] Law on the Protection of Minors,[4] Law on Protection of the Rights and Interests of the Elderly[5] and Law on the Protection of Disabled Persons[6], etc. Under Law on the Protection of Rights and Interests of Women, women shall enjoy equal rights with men in all aspects of political, economic, cultural, social and family life. The State shall protect the special rights and interests enjoyed by women according to law and gradually perfect its social security system with respect to women. Discrimination

1. The rate of unemployment in 2006, 2007 and 2008, was 4.1%, 4.0%, 4.2% respectively. Sources: State Report of Statistics of 2006, 2007 and 2008, http://www.stats.gov.cn/tjgb/. But, it is expected to be increased to 9% due to global financial crisis. Source: Chinese Macro economy Research, http://xingyuan.blog.cnstock.com/580787.html.

2. *Law of the People's Republic of China on the Protection of Rights and Interests of Women* [*Zhonghua Renmin Gongheguo Baohu Fun Quanyi Fa]* (Adopted at the Fifth Session of the Seventh National People's Congress on April 3, 1992)

3. *Law of People's Republic of China on Maternal and Infant Health Care* [*Zhonghua Renmin Gongheguo Fuyin Jiankang Baohu Fa*] (Adopted at the Tenth Meeting of the Standing Committee of the Eighth National People's Congress on October 27, 1994)

4. *Law of the People's Republic of China on the Protection of Minors* [*Zhonghua Renmin Gongheguo Qingshaonian Baohu Fa*] (Adopted at the 21st Meeting of the Standing Committee of the Seventh National People's Congress on September 4, 1991)

5. *Law of the People's Republic of China on Protection of the Rights and Interests of the Elderly* [*Zhonghua Renmin Gongheguo Laonianren Quanyi Baohu Fa*] (Adopted at the 21st Meeting of the Standing Committee of the Eight National People's Congress on August 29, 1996)

6. *Law of the People's Republic of China on the Protection of Disabled Persons* [*Zhonghua Renmin Gongheguo Canjiren Baohu Fa*] (Adopted at the 17th Meeting of the Standing Committee of the Seventh National People's Congress on December 28, 1990)

against, maltreatment of, or cruel treatment in any manner causing bodily injury or death to women shall be prohibited. (Art. 3) Under Law on Maternal and Infant Health Care, the State shall develop the maternal and infant health care undertakings and provide necessary conditions and material aids so as to ensure that mothers and infants receive medical and health care services. (Art. 2) Law on the Protection of Minors provides that for the purposes of this Law, minors mean citizens under the age of eighteen. (Art. 2) Minors shall enjoy the right to life, the right to development, the right to being protected and the right to participation, and the State shall give them special and preferential protection in light of the characteristics of their physical and mental development and ensures the inviolability of their lawful rights and interests. Minors shall enjoy the right to education, and the State, society, schools and families shall respect and protect such right. Minors shall, regardless of their sex, ethnic status, race, family property background and religious belief, enjoy their rights equally in accordance with law. (Art. 3) Law on Protection of the Rights and Interests of the Elderly provides that the elderly referred to in this Law are citizens at or above the age of 60 (Art. 2) and the elderly have the right to obtain material assistance from the State and society and enjoy the achievements in social development. Discriminating against, insulting, maltreating or forsaking the elderly is forbidden. (Art. 3) Law on the Protection of Disabled Persons provides that Disabled persons shall enjoy equal rights with other citizens in political, economic, cultural and social fields, in family life and other aspects. The citizen's rights and personal dignity of disabled persons shall be protected by law. Discrimination against, insult of and infringement upon disabled persons shall be prohibited. (Art. 3) It is no doubt that Chinese laws have provided women, children, elderly and disabled persons with a powerful legal protection. But, it seems that disable persons sometime are unable to access the public facilities due to lack of special entries for them. It needs more financial support from local governments and more protections of facilities for disabled persons.[1]

In regard of legislative efforts to protect ethnic minority rights in China, Law on Regional National Autonomy[2] provides that Regional national autonomy means that the minority nationalities, under unified State leadership, practice regional autonomy in areas where they live in concentrated communities and set up organs of self-government for the exercise of the power of autonomy. Regional national autonomy embodies the State's full respect for and guarantee of the right of the minority nationalities to administer their internal affairs and its adherence to the principle of equality, unity and common prosperity for all

1. See report: Improve the management of facilities for disabled persons, http://www.chinadp.net.cn/dp_/life/furniture/2009-01/04-2861.html.

2. *Law of the People's Republic of China on Regional National Autonomy* [*Zhonghua Renmin Gongheguo Minzu Zhijiqu Fa*] (Adopted at the Second Session of the Sixth National People's Congress on May 31, 1984)

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the nationalities. (Preface) Recent social turmoil in capital of Xinjiang and that of Tibet last March can not change Chinese long standing policy to protect ethnic minority. It must be distinguished from issues of anti-secession and anti-terrorist. Any secession and terrorist must be put down. Minority rights must be protected.

In sum, most constitutional rights of citizen have been implemented by relevant laws. A brief statuary construction of human rights above demonstrates that China must make further legislative efforts to protect civil and political rights, at the same time to continue improvements of protection for all coverage of economic, social and cultural rights as well as rights against any discrimination on gender, age, physical disability and race or nationality. Nearly all laws constructed above were made in last three decades, which means that China has a very short history to protect human rights under laws. China must do more in this regard.

4. Judicial Construction of Human Rights in China

Human rights shall not be protected by legislation only. How do Chinese People's Courts at national or local levels enforce the Constitution and laws for protection of human rights? It is not easy to answer because of no special courts or procedures to handle the cases of human rights in China. It may be helpful to understand this issue by checking jurisdiction of Chinese People's Court and analyzing some cases related to human rights.

In accordance with the Organic Law of the People's Courts,[1] there are four levels of courts in China, i.e., the Supreme People's Court at national level; higher people's courts at provisional level; intermediate people's courts at sub-provisional or regional level and primary people's courts at county or district level. Each people's court has three divisions, i.e., civil division, criminal division and administrative division, to adjudicate civil cases, criminal cases and administrative cases respectively under the Law of Civil Procedure,[2] the Law of Criminal Procedure[3] and the Law of Administrative Procedure.[4] The jurisdiction of people's court at different level or division is dependant on the nature of case with consideration of how much damages or what kind of criminal punishment would be

1. *Organic Law of the People's Courts of the People's Republic of China* [*Zhonghua Renmin Gongheguo Renmin Fayuan Zuzhi Fa*] (Adopted at the Second Session of the Fifth National Congress on July 1, 1979)

2. *Civil Procedure Law of the People's Republic of China* [*Zhonghua Renmin Gongheguo Minshi Susong Fa*] (Adopted at the Fourth Session of the Seventh National People's Congress and promulgated by Order No. 44 of the President of the People's Republic of China on April 9, 1991)

3. *Criminal Procedure Law of the People's Republic of China* [*Zhonghua Renmin Gongheguo Xingshi Susong Fa*] (Adopted at the Second Session of the Fifth National People's Congress on July 1, 1979, promulgated by Order No. 6 of the Chairman of the Standing Committee of the National People's Congress on July 7, 1979 and effective as of January 1, 1980)

4. *Administrative Procedure Law of the People's Republic of China* [*Zhonghua Renmin Gongheguo Xingzheng Susong Fa*] (Adopted at the Second Session of the Seventh National People's Congress and promulgated by Order No. 16 of the President of the People's Republic of China on April 4, 1989)

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expected. There are no special rules to figure out the human rights case in China. But, it is general principle that State shall be responsible for protecting human rights, and a Chinese citizen has rights to suit a State organ including administrative and judicial organ if the organ violates Constitution and laws with official acts of failure to protect constitutional or statuary human rights. Therefore, the cases in which a citizen brings a suit to a State organ would be focused to know how Chinese People's Courts enforce human rights. A couple of cases are to be analyzed as examples.

Cases analysis (A): Chinese citizen obtained the State compensation in the cases that Chinese public security organs (police) violated citizens' freedom of personal inviolability. Some cases have been disclosed.[1] For example, Mr. Xin GUAN was accused of injuring others and in custody at the Public Security Bureau of Yingshan County, Sichuan Province on 21 June 2004 for further criminal proceeding, but unfortunately, Mr. GUAN died on 26 August due to serious illness during custody. The investigation was conducted by the Public Security Bureau of Sichuan Province and finally confirmed that Mr. GUAN's death was caused by delay of medical treatment. Mr. GUAN's parents brought a suit to the People's Court of Yingshan County with claim for obtaining compensation of RMB 398,100 Yuan from Public Security Bureau of Yingshan County on November of 2006. The claim was supported because that Mr. GUAN shall be treated in humanitarian way even though he might be charged as a criminal. In another case, Miss. Jing HUANG was accused of suspended crime and in custody by the Public Security Bureau of Haidian District in Beijing for 295 days. On 19 November 2006, the People's Procuratorate of Haidian District made a decision on Miss. HUANG's innocence and not to initiate a prosecution. Miss. HUANG obtained RMB 29,197.14 Yuan as State compensation due to misconduct of the Public Security Bureau of Haidian District which violated Miss. Huang's personal inviolability. In the case of police beating Mr. Shengli LI to death, under judgment on 19 May 2009, by the Intermediate People's Court of Luohe City, Henan Province, three policemen were charged of murder and sentenced to death or prison for life respectively. The family of victim obtained RMB 610,000 Yuan as State compensation.

Cases analysis (B): Chinese citizen obtained the State compensation in the cases that People's Courts made wrong decisions and therefore violated citizens' freedom of personal inviolability. Mr. Yongguo YIN was accused of murder and sentenced to death by the Intermediate People's Court of Dehong Autonomy Region in March, 2005. Defendant appealed to the Higher People's Court of Yunnan Province, which reversed the judgment of the first instance and decided that Mr. YIN was not guilty because of insufficient evidences of murder.

1. China has no statuary cases reports. Source of cases summary: China court website/database of Chinese cases, http://www.chinacourt.org/html/ajk/more.shtml?location=0406000000&pagenum=19. It is the same sources of cases to be discussed in this paper.

On 6 September 2005, Mr. YIN was freed after 555 days of police custody. He was granted States Compensation RMB 40,000 Yuan. In another similar case, Mr. Yiji CAI was also accused of murder by the People's Prosecutorate of Lanzhou City, Gansu Province, but the Intermediate People's Court of Lanzhou City made the judgment of the first instance on 24 April 2006, deciding that Mr. CAI is not guilty. The Higher People's Court of Gansu Province confirmed it on 29 December 2006. After being freed, Mr. CAI brought a suit and claimed RMB 11,582.40 Yuan as State compensation for being custody by Prosecutorate for 158 days.

The above cases were made in accordance with the Law of State Compensation[1] and the Criminal Law.[2] The Law of State Compensation provides that, when State organs or State functionaries, in violation of the law, abuse their functions and powers infringing upon the lawful rights and interests of the citizens, legal persons and other organizations, thereby causing damage to them, the victims shall have the right to State compensation in accordance with this Law. (Art. 2) The analyzed cases (A) are related to administrative compensation because the public security bureau (police) is an administrative organ. Under the Law of State Compensation, the victim shall have the right to compensation if an administrative organ or its functionaries, in exercising their administrative functions and powers, commit any of the following acts infringing upon the human rights of a citizen: (1) detaining a citizen in violation of the law or unlawfully taking compulsory administrative measures in restraint of his personal freedom; (2) unlawfully taking a citizen into custody or depriving him of human rights by other unlawful means; (3) using or instigating violence such as beating one up, thereby causing bodily injury or death to a citizen; (4) unlawfully using weapons or police restraint implements, thereby causing bodily injury or death to a citizen; or (5) other unlawful acts causing bodily injury or death to a citizen. The analyzed cases (B) are related to criminal compensation. Under the Law of State Compensation, the victim shall have the right to compensation if an organ in charge of investigatory, procuratorial, judicial or prison administration work, or its functionaries, infringe upon his human rights in the exercise of its functions and powers in any of the following circumstances: (1) wrong detention of a person without incriminating facts or proof substantiating a strong suspicion of the commission of a crime; (2) wrong arrest of a person without incriminating facts; (3) innocence is found in a retrial held in accordance with the procedure of trial supervision, but the original sentence has already been executed; (4) extortion of a confession by torture or causing bodily injury or death to a citizen by using or instigating the use of violence such as beating one up; or (5)

1. *Law of the People's Republic of China on State Compensation* [*Zhonghua Renmin Gongheguo Guojia Peichang Fa*] (Adopted at the Seventh Meeting of the Standing Committee of the Eighth National People's Congress and promulgated by Order No. 23 of the President of the People's Republic of China on May 12, 1994)

2. *Criminal Law of the People's Republic of China* [*Zhonghua Renmin Gongheguo Xingfa*] (Adopted at the Second Session of the Fifth National People's Congress on July 1, 1979). It will not be discussed on substantial issues of crime related to wrongful acts of police, court or prosecutor in this paper.

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causing bodily injury or death to a citizen by the unlawful use of weapons or police restraint implements. The standard of State compensation is RMB111.99 Yuan per day of wrongful custody with infringement of the citizen freedom on personal inviolability.[1]

At least in cases of protection for human rights and citizen freedom to personal inviolability by above cases analysis with legal basis, a preliminary conclusion would be made that Chinese judicial procedures have been improved in last decade to enforce human rights. But, some problems are to be resolved. For example, how to review by courts on administrative organs' decision rejecting the citizen's applications of assembly, association, procession and demonstration needs new law of association or revision of current Law of Administrative Procedure to implement Constitutional rights of citizen in China. Otherwise, the human rights may not be protected by fair and equitable procedures. It is also needed to have a systematic collection of judgments related to human rights protection in China. Otherwise, it is difficult to understand the jurisprudence in this regard because that disclosed cases above are not completed courts' judgments instead of mostly news reports appeared with a very few legal reasoning.

5. China's Obligation under Human Rights Conventions

China is the party of core international human rights conventions (year of accession), which have been entered into force as such Convention on the Prevention and Punishment of the Crime of Genocide (1983), International Convention on the Elimination of All Forms of Racial Discrimination (1981), International Covenant on Economic, Social and Cultural Rights (2001), International Convention on the Suppression and Punishment of the Crime of Apartheid (1983), Convention on the Elimination of All Forms of Discrimination against Women (1980), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1988), Convention on the Rights of the Child (1992), Amendment to article 43 (2) of the Convention on the Rights of the Child (2002), Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2008), Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2002), Convention on the Rights of Persons with Disabilities (2008).[2] In addition to be the party of above core international

1. Article 26 of Law of State Compensation provides that if freedom of the person of a citizen is infringed, compensatory payment for each day shall be assessed in accordance with the State average daily pay of staff and workers in the previous year. In accordance with Chinese State Statistics, the State average daily pay of staff and workers in 2008 was RMB 111.99 Yuan. Sources: http://www.chinacourt.org/html/article/200904/10/352342.shtml. The Law was revised on April 29, 2010 by the fourteenth Meeting of the Standing Committee of the Eleventh National Congress to have the new standard of assessment as five times of previous year's average daily payment.

2. Source: UN Treaty Collection/Chapter IV: Human Rights, http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en.

human rights conventions, China has signed some human rights conventions including International Covenant on Civil and Political Rights.[1]

It may be necessary to consider the relation between Chinese domestic laws and international laws in general before discussing Chinese obligations under human rights conventions. Article 67 (14) of Chinese Constitution provides that the Standing Committee of the National People's Congress exercises the functions and powers including power to decide on the ratification or abrogation of treaties and important agreements concluded with foreign states; The National People's Congress has not ratified any treaty or agreement even though it is implied to have such power. Under the Constitution, the Standing Committee has power to make laws while the National People's Congress making the basic laws. Therefore, any ratified treaties shall be regarded with legislative rank of laws, which are below of the basic laws. Unavoidable, there are occasionally conflicts between the ratified treaties and basic laws, even the laws because any law and ratified treaty shall be ranked at the same level. Of course, Constitution is prevailing over any ratified treaties. But, it is interesting that Article 142 of the 1986 General Principles of Civil Law[2] provides that [in the cases evolved foreign elements] if any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall be applied, unless the provisions are ones on which the People's Republic of China has announced reservations.

In practices of People's Courts, it is not only limited to apply for civil cases, but also for administrative cases.[3] It arises some problems regarding application of human rights conventions in China. First, in considering the Chinese States responsibilities to protect human rights, how to deal with possible conflict between international human rights treaties and domestic laws in Chinese People's Courts. Whether shall it be limited in cases only evolved foreign elements? Secondly, in regard of protection of human rights related to criminal laws as well, how to deal with possible conflict between international human rights treaties and criminal laws in Chinese People's Courts. Thirdly, in coverage of citizen rights listed in Chinese Constitution and human rights protected by core conventions of human rights such as International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights, the citizen rights and human rights

1. China signed ICCPR on 5 October 1998 and continues to prepare earlier ratification upon having well done relevant legislations. See China State Plan of Action on Human Rights (2009-2010), http://news.xinhuanet.com/newscenter/2009-04/13/content_11177077.htm.

2. *General Principles of the Civil Law of the People's Republic of China* [*Zhonghua Renmin Gongheguo Minfa Tongze*] (Adopted at the Fourth Session of the Sixth National People's Congress on April 12, 1986)

3. Article 72 of *Administrative Procedure Law* provides that [in the cases evolved foreign elements] if an international treaty concluded or acceded to by the People's Republic of China contains provisions different from those found in this Law, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations.

are essentially same. But, in term of nationality, Chinese Constitution is aimed to protect Chinese citizen rights as priority and also to protect foreigners' rights if they are legitimated for living in China.[1] As usual, foreigners are not allowed to enjoy right to vote or stand for election, etc. Therefore, foreigners may not be protected in some fields of human rights while being protected in their home countries. In this sense, Chinese citizen rights are not the same with human rights.

Taking these considerations above, it would be oriented to discuss Chinese obligations under human rights conventions only by focusing on perspective of international laws, which means that no matter how China makes its domestic laws as well as applications of international treaties in domestic forums, China must take its obligations under ratified conventions of human rights. It shall be Chinese understanding for its obligations. It shall be the same elsewhere in the world.

China has international obligations to protect human rights under core conventions. For example, Convention on the Prevention and Punishment of the Crime of Genocide excepting article 9 of the said Convention[2] imposes obligations on contracting parties including prevention of following acts of genocide (a) killing members of the group; (b) causing serious bodily or mental hurt to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures to prevent births within the group; (e) forcibly transferring children of the group to another group. Did China violate these obligations? It appears no evidences disclosed by any inter-governmental organization such as UN Human Rights Council and Office of the Special Adviser on the Prevention of Genocide to criticize or condemn Chinese record in this regard.[3] *International Convention on the Elimination of All Forms of Racial Discrimination* imposes obligations that States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; (b) each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations; (c) each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which

1. Article 32 of *Constitution*: the People's Republic of China protects the lawful rights and interests of foreigners within Chinese territory; foreigners on Chinese territory must abide by the laws of the People's Republic of China.

2. China *Declaration*: 1. The ratification to the said Convention by the Taiwan local authorities on 19 July 1951 in the name of China is illegal and therefore null and void. *Reservation*: 2. The People's Republic of China does not consider itself bound by article IX of the said Convention (not recognize jurisdiction of International Court of Justice in this regard).

3. Source: http://www.un.org/preventgenocide/adviser/index.shtml.

have the effect of creating or perpetuating racial discrimination wherever it exists; (d) each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization; (e) each State Party undertakes to appropriately encourage the elimination of racial barriers through integrationist multiracial organizations and movements as well as other means, and to discourage anything which tends to strengthen racial division. It also appears no evidences disclosed by any inter-governmental organization such as UN Human Rights Council and its sub Committee on the Elimination of Racial Discrimination to criticize or condemn Chinese record in this regard.[1]

A few working group reports were disclosed by former UN Commission on Human Rights to criticize Chinese record of human rights. For example, the report on the right to education[2] believes that China's law does not yet conform to the international legal framework defining the right to education. Its Constitution defines education as an individual duty, adding a "right to receive education." Freedom to impart education is not recognized, nor is teachers' freedom of association, and religious education remains prohibited. Therefore, the Special Rapporteur recommends that China's law be reviewed using the yardstick of its international human rights obligations so that human and minority rights can be integrated in education policy, law and practice. She also recommends extensive public education, as has been done for the implementation of China's obligations stemming from its membership in the World Trade Organization. Moreover, an analysis should be made of the human rights impact on the coexistence of private and public education, and on the private and public law that regulate them.

It is misunderstanding that China's "Constitution defines education as an individual duty." The Article 19 of Constitution provides that "the State undertakes the development of socialist education and works to raise the scientific and cultural level of the whole nation. The State establishes and administers schools of various types, universalizes compulsory primary education and promotes secondary, vocational and higher education as well as pre-school education." Article 46 provides that "citizens of the People's Republic of China have the duty as well as the right to receive education."

In context of the two articles, it shall be constructed that Constitution imposes State's responsibility to "universalize compulsory primary education," which means nine-year

1. Sources: http://www2.ohchr.org/english/bodies/cerd/index.htm.

2. *ECONOMIC, SOCIAL AND CULTURAL RIGHTS*: *The right to education* (Report submitted by the Special Rappoteur, Katarina Tomaševski, Addendum, Mission to China), Economic and Social Council, Distr.GENERALE/CN.4/2004/45/Add.1 (21 November 2003), Original: ENGLISH. Three reports on civil and political rights E/CN.4/2006/6/Add.6 (10 March 2006), E/CN.4/2005/6/Add.4 (29 December 2004) and E/CN.4/1998/44/Add.2 (22 December 1997) were focused on torture and detention, concerning many fact-finding issues instead of legal construction. It reserves another paper to discuss.

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compulsory education including six-year elementary school and three-year middle school for every Chinese of school-ages at 6-16. Compulsory Education Law[1] provides that this Law is enacted in accordance with the Constitution and the Education Law, for the purpose of ensuring the right of school-age children and adolescents to compulsory education, guaranteeing provision of compulsory education and improving the qualities of the entire nation. (Art. 1) The State implements a system of nine-year compulsory education. Compulsory education means that education is uniformly provided by the State and which all the school-age children and adolescents must receive, and constitutes a public welfare undertaking which must be guaranteed by the State. No tuition or miscellaneous fees shall be charged for provision of compulsory education. The State establishes a mechanism for guaranteeing funds for compulsory education, to ensure implementation of the system of compulsory education. (Art. 2) It is very clear that nine-year compulsory education in China is implemented to protect the citizen right of school-age to receive education. The so-called "duty" of education means that all school-age children and adolescents of Chinese nationality shall, in accordance with law, enjoy the equal right, and fulfill the obligation, to receive compulsory education, regardless of sex, ethnic status or race, family financial conditions, religious belief, etc. (Art. 3) Under the nine-year compulsory primary education in China, the right to education for school-age children or adolescents should be protected much better. There are no inconsistencies with China's obligation under International Covenant on Economic, Social and Cultural Rights. The real problem to implement the Constitution and the Law of Compulsory Education is that, in some rural areas of China, local governments are unable to have enough financial resources to guarantee school-age children or adolescents study opportunities at public elementary or middle schools. It is not issue whether the school-age citizens have duty to receive education, but the problem of governments' failure to take their responsibilities to protect the rights to receive education. It might be considered to be inconsistent with China's obligation under human rights convention.

In sum, it shall be clarified what is China's obligations under international human rights conventions and Chinese Constitution and laws shall be constructed in proper context from legal perspective.

6. Differences and Commonalities in China and EU Regarding Human Rights

In comparison with Europe regarding human rights, it would be benefited to focus on historical development after the World War II because the first regional convention in Europe for protection of human rights was made in 1950. The European Convention for the

1. *Compulsory Education Law of the People's Republic of China* [*Zhonghua Renmin Gongheguo Yiwu Jiaoyu Fa*] (Adopted at the Fourth Session of the Sixth National People's Congress on April 12, 1986, and amended at the 22nd Meeting of the Standing Committee of the Tenth National People's Congress on June 29, 2006)

Protection of Human Rights and Fundamental Freedoms (ECHR) was signed in 1950 and entered into force in 1953. The impetus of the adoption of the ECHR is to avoid human rights disaster in Europe. e.g., the Holocaust, which resulted in the perishment of almost 6 million Jews and millions of others. That is why the Article 1 of ECHR requires the Parties to secure the basic human rights to everyone within their jurisdiction including rights to life. "No one shall be deprived of his life intentionally saving in the execution of a sentence of a court following his convention of a crime for which this penalty is provided by law."[1]

The ECHR exclusively requires Parties to protect the civil and political rights such as right to life (Art. 2), prohibition of torture (Art. 3), prohibitions of slavery and forced labour (Art. 4), right of liberty and security (Art. 5), right to a fair trial (Art. 6), no punishment without law (Art. 7), right to respect for private and family life (Art. 8), freedom of thought, conscience and religion (Art. 9), freedom of expression (Art. 10), freedom of assembly and association (Art. 11), right to marry (Art. 12), rights to an effective remedy (Art. 13), prohibition of discrimination (Art. 14). In addition to the listed civil and political rights of the ECHR, many protocols have been adopted since 1952 to provide more options for Parties' acceptance, which include right to property, the right to education, freedom to leave any country, freedom from exile, the right to enter the country of which one is a national, the right to compensation for a miscarriage of justice.[2] It seems that protocols include some economic, social and cultural rights, but they are not mandatory for Parties to protect.

The ECHR designs the regional court of human rights for any individual to initiate a case against the government of Parties if the government violates the listed human rights. It is the first super-national court of human rights for individual compliance in the history of modern society. In the year of conclusion of the ECHR, a famous British jurist, H. Lauterpacht commented that it promoted the changes in the matter of subject of international law, i.e., "the recognition of the individual as a subject of international rights."[3] He also believes that establishment of European Court of Human Rights means "the acknowledgment of the worth of human personality as the ultimate unit of all law; the realization of the dangers besetting international peace as a result of the denial of fundamental human rights."[4] The comment reflects European determination to take the historical lesson, in particular, the disaster of human rights in World War II.

It is similar in China after Cultural Revolution during the period of 1966-1976, in particular, the Destruction of Four Olds (1966-1967), which resulted in many religious

1. ECHR, 213 U.N.T.S. 221, signed on 4 November 1950, entered into force on 3 September 1953. The revised Convention was opened for signature on 11 May 1994 and entered into force on 11 November 1998.
2. Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals,* 2nd edition, Oxford University Press, 2000.
3. H. Lauterpacht, *International Law and Human Rights* (1950), at 61, Ibid, p. 147.
4. Ibid.

buildings being shut down and sometimes looted and destroyed, and numerous incidents of torture and killing, and the suicides that were the final option of many who suffered beatings and humiliation, China began to reestablish the rule of laws including the 1982 Constitution and many legislations to protect citizen rights, essentially, the human rights. China also joined many international conventions of human rights, which demonstrates that China wants to protect human rights so as to avoid the social and political turmoil and violations of the basic human rights. In terms of taking historical lesson, Europe and China share the same values. The history tells us that recognition of human rights is mainly resulted from internal changes, instead of external pressure. It is virtually impossible to realize the critical importance of rule of law and protection of citizen rights in last three decades if China did not have the Cultural Revolution. Chinese people really want to change the former CPC leader Mao's lawless regime.[1] Sino-European dialogue on human rights shall be taken based on mutual understanding the histories of China and Europe.

It is obvious that there are many differences between China and Europe in protection of human rights, in particular, with different focuses on human rights. The ECHR exclusively focuses on civil and political rights even though the optional protocols have provisions of limited economic, social and cultural rights. In contrast, China focuses on economic, social and cultural rights. From the legal perspective, the human rights shall be protected without any distinguishing criteria. A well-known Dutch human rights scholar, Professor Theo van Boven said that in modern human rights thinking, the indivisibility of human rights and fundamental freedoms is prevalent. "The idea of indivisibility presupposes that human rights form, so to speak, a single package and that they cannot rank one above the other on a hierarchical scale."[2] In terms of no hierarchy of human rights, both Europe and China shall have no focuses on protection of human rights. All human rights shall be protected. China must improve its legal system to protect human rights, in particular, the civil and political rights as I have discussed above. China must ratify the International Covenant on Civil and Political Rights.

7. Conclusion

The People's Republic of China made the first Constitution in 1954 with the basic citizen rights, which followed the former Soviet Union model without term of human rights. China reestablished the legal system in 1979 after the Cultural Revolution and suffered social and

1. After Cultural Revolution, the NPC adopted the first Criminal Law on 1 July 1979. On 1 September 1979, I went to East China Law School (now East China University of Politics and Law in Shanghai). I observed how China restored the legal system in last three decades. In 1980, China accessed into the first HR convention. The 2004 Chinese Constitution Amendment includes the HR clause, which means a long way ahead to improve Chinese legal regime to protect human rights.

2. Theo van Boven, Distinguishing Criteria of Human Rights, in Karel Vasak and Alston, (eds) The International Dimensions of Human Rights, Vol. 1 (1980), at 43, from Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals,* 2nd edition, Oxford University Press, 2000, p. 154.

political disasters with many violations of human rights. The 1982 Constitution with the new chapter to protect the citizen rights, especially, the 2004 Constitution Amendment, includes the protection of human rights. A lot of legislations have been made since 1979 in respect of citizen rights/human rights. China also accessed the core international conventions of human rights. But, China must continue to improve its legal system to protect human rights, in particular, the civil and political rights.

This paper intends to interpret the concept of human rights in China from legal perspective, which means, legal construction of Constitution, relevant statutes, judicial enforcement and international obligation. The legal construction would be useful for European counterparts to understand the legal basis in China for protection of human rights. It is the same in Europe to have the ECHR as the legal basis to protect human rights for all Europeans. It seems that the citizen rights are essentially the same with human rights in China from legal perspectives, but the 2004 Constitution Amendment requires Chinese Government to respect and preserve human rights, which likes a political declaration to the world that China determines to protect human rights under current Constitution and to implement international conventions of human rights for China is a contracting party.

In comparison with European concept of human rights, this paper believes that history tells us that recognition of human rights is mainly resulted from internal changes, instead of external pressure. It is virtually impossible to realize the critical importance of rule of law and protection of citizen rights/human rights in last three decades if China did not have social and political disaster due to the Cultural Revolution. Chinese peoples really want to change the former CPC leader Mao's lawless regime. It is obvious that there are many differences between China and Europe in respect of human rights, in particular, different focuses on either economic, social and cultural rights or civil and political rights. But, the human rights shall be protected without any hierarchical scale. All human rights must be protected. Therefore, China shall continue to improve its legal regime for protection of all human rights.

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Emphasis on Personality Dignity: New Strategic Development of China's Human Rights Cause

Chang Jian & Zhao Yulin
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China is building a well-off society in an all-round way, which requires more comprehensive protection of human rights from this particular perspective. It is in this sense that Premier Wen Jiabao has proposed to ensure that "the Chinese people live a life with more dignity," which can be interpreted as appeal and request for more comprehensive protection of human rights. It suggests that the cause of human rights in China is entering a new stage of strategic development.

I. The Dual-meaning of Dignity: Hierarchical Dignity and Personality Dignity

Personality dignity is an important concept in human rights protection. The philosophy of "fundamental human rights, personality dignity and value" is stressed in the very beginning of the preamble of the United Nations Charter[1]. But the word "dignity" has two different meanings which must be clarified for the discussion of the relationship between dignity and human rights.

In traditional culture, the word "dignity" is closely associated with order, hierarchy, privilege, taboo and other factors. According to the research done by Han Deqiang, in Chinese language, the word "dignity" (Zun Yan) consists of two characters – "Zun" (respect) and "Yan" (majesty). "Zun" inherits the shape of the character carved on tortoise shells in ancient China, referring to ancient wine containers. Back in ancient China, only emperors, generals, ministers, high officials and other nobles of high status and positions were eligible to use a "Zun" to worship gods or contain wine. Therefore, all the words and phrases derived from "Zun" primarily refer to nobility, dignified silence, sublimity, and supreme power, opposed to the Chinese character "Bei" (humility). The character "Yan" (majesty) came into being relatively later and appeared more frequently until early Shang Dynasty. It mainly refers to authority, prestige, and solemnity. Sometimes, it is also used as a respectful term of address for father or someone from an older generation. With the two characters combined together, the word "Zun Yan" (dignity) generally refers to noble or respectable status and

1. Dong Yunhu, Liu Wuping: *Overview on Human Rights in the World*, Sichuan People's Press, 1990, p. 928.

identity, inviolable, impressive and majestic bearing and manner, as well as lofty and solemn spirit. The word is simply defined as inviolable solemn dignity. In western languages, "Zun Yan" corresponds to "dignity" in English, "dignité" in French and "dignitat" in German, all derived from the ancient Latin word "dignitas," sharing the same root with "dignus" (valuable, worthy) in ancient French. The direct meaning of this root is manipulation, control, possession of territory, property or power, and its extended meaning is something inviolable, dignified, and distinguished. It can be seen, be it in traditional Chinese or Western language context, the word "Zun Yan" (dignity) is deeply imprinted with hierarchical order. It is in this sense that Han Deqiang put forward the concept of "order dignity" in his doctoral thesis and distinguished it from the concepts of "human dignity" and "personality dignity." According to his interpretation, "order dignity" refers to "inviolable, in-profaned and unsurpassable social status, group authority and state of living possessed by people based on certain social orders or rules and certain human attributes or ethical taboos." "Human dignity" refers to "the dignity inherent in humanity that defines people as human beings," which is simply based on the fact of people's existence, independent from people's identity, background, wealth, status, power and other social hierarchical factors as well as the differences of individual human beings. "Personality dignity," however, as "the sublimation of human dignity," refers to human dignity in legal sense.[1]

Distinguishing hierarchical dignity from personality dignity is of great significance. We see that even in modern society, people still think of hierarchical dignity prior to personality dignity when referring to dignity. For example, in Freud's view, human dignity "is only a feature or mark indicating a person's (in an already established social hierarchy) high social status." Wang Liming holds that dignity refers to "citizens' self-understanding and self-evaluation of their social values based on their social environment, status, prestige, working environment, family relations, and other objective conditions."[2] Liang Huixing believes that dignity refers to the "minimum social status enjoyed by a citizen as a 'human being' and the minimum respect that society and other people should hold for the citizen."[3]

However, dignity as the basis for human rights refers to universal personality dignity instead of hierarchical dignity in the traditional sense. It originates from the nature of freedom of human beings rather than certain social hierarchical status. Friedrich Schiller says: "The rule over the instincts by moral force is the emancipation of mind, and the expression by which such liberty presents itself to the eyes in the world of phenomena is what

1. Han Deqiang: *On Human Dignity*, doctoral thesis from Law School of Shandong University, March 17, 2006.
2. [Austria] Sigmund Freud: *On Civilization*, trans. by He Guiquan, etc., International Culture Press, 2000 edition, P4.
3. Wang Liming: *Difficult Problems in the Civil Law during the Reform and Opening-up*, Jilin People's Press, 1992 edition, P68.

is called dignity."[1] Kant distinguishes value from dignity in a more detailed way like this: "In the kingdom of ends everything has either value or dignity. Whatever has a value can be replaced by something else which is equivalent; whatever, on the other hand, is above all value which and therefore admits of no equivalent, has a dignity."[2]

II. Personality Dignity and Human Rights Protection

Since some scholars fail to distinguish the two different meanings of dignity, they have proposed to crystallize dignity into one or a few rights when discussing the relationship between dignity and human rights. For instance, Gan Shaoping has proposed to crystallize dignity into a "non-insulted right,"[3] while Ren Chao thinks that "equal dignity of law" and "different dignity of morality" should be reasonably combined beyond basic agreement with Gan Shaoping's view[4].

However, personality dignity is not hierarchical dignity. It is not a symbol of people's social status but how people live their lives. In this sense, personality dignity cannot be simply attributed to a special right in order not to erase its rich content. Instead, personality dignity should be regarded as the basis and the purpose direction for all human rights. In other words, the protection of personality dignity needs a series of rights instead of only one right. Any rights targeting the protection of personality dignity may and can be called human rights. This is precisely the fundamental difference between human rights and other rights.

The relationship between personality dignity and human rights is defined more clearly in the *International Bill of Human Rights*. The very opening first sentence of *Universal Declaration of Human Rights* points out: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."[5] Article 1 of the Declaration provides: "All human beings are born free and equal in dignity and rights."[6] Article 22 states: "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."[7] Later, *International Covenant on Economic, Social and Cultural Rights*, *International Covenant on Civil and Political*

1. Schiller: *On Grace and Dignity*, trans. by Zhang Yuneng, Culture and Art Publishing House, 1996 edition, P142.
2. Kant: *Fundamental Principles of the Metaphysic of Morals*, trans. by Miao Litian, Shanghai People's Press, 2000 edition, P54.
3. Gan Shaoping: *Human Rights Ethnics*, China Development Press, 2009.
4. Ren Chou: "*Dignity Concept in Human Rights Vision*," *Philosophical Trends*, first issue in 2009.
5. Same as above, P960.
6. Same as above, P961.
7. Same as above, P963.

Rights, and almost all important international human rights instruments have reiterated the abovementioned classical statement of "dignity" in the *Universal Declaration of Human Rights*.

From the above statements abstracted from literature on dignity of the United Nations, we can summarize the basic consensus on the relationship between "dignity" and human rights by the international community as follows: (1) dignity is inherent in personality; (2) all human beings enjoy equal personality dignity; (3) human rights originate from the inherent personality dignity of human beings, the equality of which is the origin of that of human rights; (4) the realization of human rights of individuals is an requisite for them to enjoy personality dignity; (5) state and international community have the obligation to ensure that individuals can enjoy their personality dignity by promoting the realization of human rights; (6) the realization of human rights is in accordance with the organization and resources of each state which will affect the protection of personality dignity accordingly.

III. Personality Dignity and Development Strategy of Human Rights in China

Premier Wen Jiabao proposed at the 2010 Chinese Spring Festival Gathering: "All the things we do are aimed at letting people live more happily with more dignity." In the government work report presented in the Great Hall at the Third Session of the Eleventh National People's Congress in the morning of March 5, 2010, Premier Wen Jiabao reiterated: "What we do is for more happiness and dignity of the people and for greater social justice and harmony." During the two-hour report, this statement won the most enthusiastic and long-lasting applause from all the delegates and committee members present.

If interpreted from the perspective of human rights development strategy, emphasis on personality dignity suggests that the cause of human rights in China has entered a new stage of strategic development characterized by all-round protection of human rights, which sets even higher requirements for the protection of human rights.

First of all, the protection of personality dignity requires more comprehensive protection of human rights, especially the protection of social rights and political rights. The essence of personality dignity lies in the living of human beings, while the essence of the living rests with man's free choice. However, as human beings live in society, the freedom of their choice will definitely be restricted by living conditions and social conditions. In shortage of basic living conditions, people's freedom of choice will be compressed to a minimum where they can hardly live with dignity. It is in this sense that China proposed to value right to subsistence and development as the primary human rights in the 1990s. Without basic protection of subsistence and economic development to provide materials basis for existence, social members cannot live with dignity. However, right to subsistence and development only provide the material basis for the protection of personality dignity, so without appropriate

social and political conditions people can still hardly live with dignity. In China, with the rapid improvement of people's material life, the protection of personality dignity will also raise more and more requirements for social rights and political rights. We see that in recent years, the cases that have been hotly debated in respect to human rights involve not only rights concerning basic survival including the right to work, the right to enjoy basic quality of life, right to social security, and the right to medical and health care, but also increasingly social and political rights, such as personal right, non-discrimination right, the right to fair trials, right to education, cultural right, environmental right, right to religious freedom, privacy right, and political rights including right to be informed, right to participate, right to be heard and right to oversee. All these rights are important safeguards for personality dignity. It is in this sense that the idea of "letting the people live with more dignity" is proposed. It means more protection of comprehensive human rights and strengthening of protection of social rights and political rights in particular.

Secondly, the protection of personality dignity requires more equal protection of human rights, especially the protection of basic human rights of the vulnerable groups. Different from hierarchical dignity, personality dignity of all human beings is equal. However, in reality, due to the restriction of living conditions and social conditions, the personality dignity that people enjoy usually shows disparity. Economically vulnerable groups in society often occupy disadvantaged positions both socially and politically as well, so they are unable to enjoy the basic personality dignity equally. Therefore, the key to protection of personality dignity is to protect the personality dignity of vulnerable groups to enable them to live a life with more dignity, and not to lose their dignity socially and politically due to their economically disadvantaged position. Establishment of a harmonious society and attention to the protection of human rights of vulnerable groups proposed by the Chinese government in recent years are both efforts heading toward the equal protection of personality dignity. If respect for the personality dignity of vulnerable group members has become a part of the common social convention, it proves that social civilization has reached a higher level.

Thirdly, the protection of personality dignity requires more specific protection of human rights, especially the determination of specific remedies for specific behaviors harmful to personality dignity. The commitment of the government to respecting and safeguarding human rights is an important prerequisite for the protection of personality dignity. In order to ensure that the social members live a life with more dignity, behaviors which insults personality dignity and the forms of punishment which the behaviors should be subject to should be specified in a detailed manner. In order words, the specific provision of all rights should be used to ensure the realization of personality dignity. At present, many fundamental rights have been stipulated in Chinese Constitution, but have not been fully and specifically provided in substantive laws, which is a problem to be solved urgently and effectively in the

next step of China's protection of human rights cause.

Fourthly, we must guard against the disconnection between rights protection and respect for personality dignity, especially the possible phenomenon of "protection without respect." If we fail to clearly understand the relationship between the protection of human rights and personality dignity, and regard rights protection as a compulsory task or even a performance indicator, the disconnection between rights protection and respect for personality dignity can be easily caused. For example, some companies and individuals use the donation to the poor as a means to elevate themselves, and ignore the recipients' self-esteem by exposing them frequently to the public. Some volunteer groups regard performing voluntary works as a formality and go to the elderly nursing home to help the senior without respect for their wishes, changing voluntary deeds into harassment. Some government bodies only take helping the disadvantaged groups as a task and a political achievement, and implement various security programs without considering the actual wishes and requirements of the helped. All of these behaviors, though in the name of rights protection, actually hurt the recipients' self-esteem. From this perspective, emphasis on the protection of personality dignity has pointed out the right direction for the proper protection of human rights.

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On Some Basic Issues of China's Current Human Rights Development

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Human rights have been quite sensitive issues troubling China since its reform and opening-up. Despite the complicated human rights situations home and abroad as well as the unfounded criticism and interference from the West, China has irrefutably made significant progress in its human rights development. In particular, China has ushered in a new phase of rapid human rights construction with the constitutionalization of "respect and protection of human rights" in March 2004 and the inclusion of the same term in the party constitution as stated in the report of the 17th National Congress of CPC. Human rights protection has been accorded increasing importance in China, which, along with the corresponding institutional arrangements and policy design, is molding new features and suggesting new orientations. Now we have come to the new and historical starting point where the accurate grasp and clear identification of theoretical and practical issues in the current human rights development are essential in making breakthrough in China's human rights development, fully materializing the promise of respect and protection of human rights and constructing the human rights development pattern with Chinese characteristics.

I. From Human Rights Enlightenment to the Stable Growth: the Phasic Position of China's Human Rights Development

Reform and opening-up stand to be the contemporary and historic starting point from which China's human rights construction ushered in its enlightenment. It is significant to note that China's human right enlightenment dating back to 1970s is not the product of external driving forces as some scholars believe. In essence, the origination and maturity of human rights awareness among the overwhelming majority is the corollary following the transformation from citizen consciousness to civic awareness, thanks to the expansion of market economy. Put another way, the advent of China's human rights enlightenment and construction in itself is an endogenous product instead of the outcome of the oppression and inducement from external pressure. Subject to external impact in some way or other as it is, it fundamentally derives from the traditional cultural genes and the actuality of national growth, which may well account for the distinct national hallmarks and unique development

path in China's human rights construction since its enlightenment. As a matter of fact, in the three decades of China's human rights enlightenment, external interference has primarily carried negative or even deterrent implications for China's human rights development; the arrogance and prejudice from the West only make China more affirmative in its basic position on the independent path which therefore deviates and even runs counter to the purpose of the external forces.

The 30-year human rights enlightenment assumes the following features compared to its current development: (1) the initial germination of human rights awareness was slightly rationalized, with the majority's understanding of human rights being perceptual and short of rationality and self-consciousness; (2) in the absence of corresponding institutional arrangements to the inclusion of human rights into the sphere of national protection, it was through the practice of human rights protection that the government highlighted its value on human rights development. It was also a period when human rights existed fragmentally in laws, rules and regulations with respect to the national institutional system; (3) human rights were pushed to a secondary position in economic and social life when the policy centering on economic development prevailed with the government and people unavoidably prioritizing rapid economic development; the improvement of human rights during this period was no more than the natural production of economic growth; (4) relatively extreme measures were taken in addressing the rising demand for human rights protection; particularly, there were some human rights defenders or individuals posing themselves as the representatives of public opinion who tended to ignore China's national condition and attempted to take actions that were outside the national system or even illegal in realization of their human rights intentions; (5) the human rights development was not adequately supervised or protected by binding forces.

A shadow that has always accompanied China's human rights development since its reform and opening-up is the longstanding attack and ideological prejudice on China's human rights situation from the West. When analyzed from an international perspective, this phenomenon is the inevitable outcome of the uncertainty of western countries about China's intention and direction when they witness China's constantly rising share in the international market, its growing influence in international political and economic affairs and therefore enormous challenges to their traditional dominant status. The multi-level interactions between the external elements and the continuous enhancement of domestic democracy along with the germination of civic awareness are bound to make human rights a key subject in China's transitional period. For the Communist Party aspiring for long-term administration, the respect and protection of human rights lie as its inexorable choices which are hard to achieve during a certain period by way of fragmental policies or measures. Nevertheless, with the growth of social-economic development, the improvement of market

economy, the gradual maturity of civic society, the consolidation of supervisory system and force along with the institutionalization, normalization and routinization of political practice, it is quite certain that human rights construction can be driven up by the constant reinforcement of these internal forces. In fact, judging from the development in recent years, China is gradually completing its enlightenment and moving on to a phase where stable and rapid human rights development is realized.

What radically differs human rights enlightenment from the stable growth is not advocating respect and protection of human rights in political and social life, but the popularity of human rights consciousness, improvement in the institutionalization of human rights and the promotion of the positive interaction between human rights and social-economic development. In general, there are several quantifiable indicators:

The popularity of human rights consciousness

It mainly manifests itself in the majority's raised human rights awareness and rational rights defense instead of the minority's discourse tool or propaganda.

The intensity of human rights promotion

When the entire society attaches growing importance to human rights, the obstacles on the way of human rights construction will decrease; and consequently the cost will be reduced, as well as human rights violations. In this sense, China's high value on human rights construction constitutes the important external factor that accelerates its transition to rapid human rights development.

The institutionalization and legalization of human rights protection

There is an inseparable relation between the lack of respect for human rights and related legal deficiency. China has witnessed, in recent years, progressive development in its legalization.

The preservation by social-economic resources

Human rights development is the product of positive interaction between political power and economic strength. Besides the promotion by political power, human rights construction calls for abundant expenses, rendering economic growth and advancement of the whole society, which are crucial driving forces for human rights development.

The constraints and supervision from government power

This is another critical component for human rights development which increases the difficulty in committing human rights violations.

The social tolerance of human rights violation and engagement of human rights protection

The rapid maturity of civic society is one of the most striking momentums in China's political construction which not only cultivates the societal soil for germinating human rights awareness, but also expands the supervisory and binding subjects on human rights violations.

In short, the fundamental feature of human rights stable growth consists in the extensive attention to human rights across the country, the reduction of originally high human rights costs as well as the identification of human rights construction as the organic cell of national build-up and the significant indicator of the rise in soft power. China's transition from human rights enlightenment to stable growth is not only justified by the aforementioned indicators, but also evidenced from the series of new human rights changes in China's political, economic, social and cultural life: (1) China's economy is falling into a conventional pattern where changes in people's requirements for protection, judgment criterion, behavior code and the like are taking place and human rights defense is increasingly becoming citizen's rational and self-conscious activities; (2) in response to the transformation of the economic pattern, the political development concept which used to be highly centralized and dominant is becoming increasingly democratic where people-oriented philosophy prevails; (3) the approaches of human rights construction previously swept by the government is now undertaken by the collaboration of the whole society and massive civic participation under the government's guidance where the reliance on the government function is lessened; (4) the institutional protection, legal protection along with the constraints and supervision on human rights are organically integrating and human rights construction is driven by both positive and negative factors; (5) the initiatives and effectiveness of the participation of social forces in human rights promotion are constantly intensifying, therefore forcefully quickening human rights construction in government at all levels; (6)the equalization of human rights violation to compromise of social fairness by the prevailing cultural mentality brings national human rights notions and judgment standards in link with international human rights norms.

Moreover, we can also moderately draw on the common international experience as of the transition from human rights enlightenment to the stable growth. In terms of economic development, the transition roughly took place in western countries led by the US in the late 19th and early 20th as basically suggested by the commencement of Progressive Movement, the termination of the spoils system, the formulation of Anti-trust Law, muckraking as well as municipal and state reforms, etc. From that time onwards, human rights, no longer downplayed in the constitutional terms, became the fundamental features indicating social progress and even setting democratic countries apart from despotic ones; this may well explain the essential root causes for the engagement of western countries in the name of human rights protection during the two world wars. Newly industrialized countries including South Korea displayed the similar pattern in the late 1980s. China, with the 30 years of rapid development, has achieved a comparable level of economic strength with these countries where its human rights development is bound to conceive similar phasic features.

II. Constraints on the Transition: the Binding Conditions on China's Human Rights Development

In recent years, China has come to a transitional phase in its social and economic development where substantial changes are propelled in the environment of its human rights development. Basically, the advent of transition does not only consist in the transformation from extensive to sustainable economic growth pattern, but also carries profound value and institutional implications that call for our new adjustments to the concepts and approaches of human rights development.

Economically, the transition signifies the transformation of the unconventional development pattern to a stable one, of the encouragement of rules contravention to compliance, of the law of the jungle to fair laws that radically change the economic foundation of human rights development and complicate the game relation between power and rights.

At the societal level, the transition indicates the transmutation of a unitary structure to a diverse one, of the philosophy of struggle to harmony, of the massive mobilization to social governance. Despite the opposing interests and interest orientations among different social groups forced by social stratification and enlarging financial gap, the human rights protection mechanism continues to serve the traditional single structure and therefore results in its disorientation in the new social structure.

In political terms, the transition means the transformation of power-orientation to right-orientation, of the subjective decision-making process to a democratic one and of the elite politics to democratic politics. With human rights development dependent on political development and the democratic path of national politics awaiting further exploration, human rights construction is subject to multiple political uncertainties and can hardly maintain its stability.

Besides the far-reaching external influence and impact on China's human rights development, the transition of human rights enlightenment to stable growth signifies a crucial transformation in the internal conditions and features of China's human rights construction. If human rights development in its enlightenment is the additional outcome of reform and opening-up, it is possible to exert far more profound political impacts during its stable growth phase, provided that people's attention to human rights protection is intensified by economic expansion and social preservation, and positive image of the government highly valuing human rights is established by way of publicity. These implications manifest in the diminishment of positive effects and magnification of negative effects during human rights construction. On the one hand, the achievement in human rights development is increasingly taken for granted and selectively ignored, thereby downplaying, intentionally or unintentionally, its positive impacts. On the other hand, the deficiencies in human rights

would become the focus of attention where the social and political effects of a common incident of human rights violation is to be enormously magnified by the media coverage and exaggerated by the Internet or even call into question the image of the government. To put it further, as the government doubles its efforts in human rights construction, the inexorable flaws are likely to pose growing challenges to its image in which a slight change or projection of human rights condition can possibly produce substantial political influence.

In other words, the period of stable human rights growth is likely to witness ascending political effects in human rights development and increasing political risks in relation to human rights issues; it is also a stage likely to result in the situation where economic foundation determines the superstructure which directly affects Chinese laws, institution and decision-making, therefore immensely increasing the risks and difficulties in human rights development and widening the grave gap between the actual condition and projection of human rights construction.

Put it further, the current sensitivity of human rights in China can be possibly disparaged in two ways. There are some social groups and foreign propaganda belittling and distorting China's human rights protection and conditions, which results in unnecessary damage of China's image in the international community. Moreover, China's achievements in human rights construction are actually undermined by a few local regional governments, resulting in a sense of unreality among the mass, because of the difficulty in understanding China's human rights conditions in a realistic and objective manner home and abroad. On the one hand, the insufficiency of official statistics forces people to interpret China's human rights conditions through the opinion polls which can hardly provide truthful judgment due to the involvement of people's own experience and will. On the other hand, there are some local governments, in consideration of their images and performances, prone to manipulate the mainstream media in overly publicizing their accomplishments of human rights construction which therefore conversely increases the sensitivity of human rights issues.

III. Value Orientation of China's Human Rights Development

China ushered in its rapid development during the atmosphere where it has materialized 30 years of rapid economic growth and witnessed constant enhancement in its human rights protection but is still lacking in its improvement of human rights condition. This carries vital implication for China that necessitates the transcendence of China's human rights development over traditional instrumental concepts and the transition from counter measures to systematic, coordinated and holistic national construction, thereby radically ameliorating the unfavorable political ecology for human rights development and conceptually altering the unitary human rights notions centering on the dominance and promotion of the government and positioning the ruling party and government as the only subjects of human

rights construction to the ones that increasingly focus on normalization and motivation of human rights protection as well as the mobilization of the entire society in the human rights promotion campaign. Meanwhile, when it comes to intellectual innovation, the core concept of human rights development has to realize the integration of advancement by power and by the institution and display more distinct Chinese characteristics in its way of thinking and construction approach.

Note that China's achievements in human rights for the long time have been remarkable, and institutional restructure and innovation are needed in its human rights construction during the new period. Meanwhile, human rights, more than the objective requirement for national political development, take root in Chinese traditional culture; the mere focus on human rights protection measures without the cultivation of people's right awareness renders it difficult for human rights development to fit in China's demand for modernization. See to it that the stress on the modernity of human rights is not a simple disengagement from traditional culture or value regression, but rather inheritance of and innovation on the new concepts. In terms of the ultimate value, it is not only the comprehensive respect and protection of human rights but also the improvement of the entire national political ecology that are required in human rights development.

Having ushered in the stable growth of human rights, one of the crucial prerequisites for China's human rights promotion is the establishment of open strategic ideas. Human rights development is an open process of political construction which can draw on Marxist human rights theory, the positive parts of Chinese traditional culture, the beneficial human rights experience in developed countries as well as East Asian countries such as Singapore and South Korea whose traditional culture shares a lot in common with Chinese. Additionally, human rights development in China, currently in a progressive pattern, basically entails the spiritual motivation deriving from reform and innovation, the persistent and moderate promotion and improvement based on the different stages of reform and opening-up, the objective reality in China's social-economical development, the guarantee of the overall smooth operation of China's reform and opening-up as well as the constant deepening of democratic political construction. Specifically, there are some basic value orientations China must adhere to with an open and innovative spirit in its human rights development.

First, it is vital that China's human rights development insist its socialist nature which essentially differs from human rights development in other countries. Human rights development in China, first and foremost, has to abide by the national socialist characteristics and the socialist layout without which it cannot erect its unique features or proceed in the right direction.

Second, "Chinese characteristics" have to be highly valued in China's human rights development. As a large developing country, the relatively low GDP per capita inexorably

retards China's human rights development, despite the fact that China has, by way of its 30 years of rapid development, largely resolved the insufficiency of human right protection due to resource scarcity. Meanwhile, with a long history and traditional short of democracy and human rights, the 5,000-year autocratic political mentality has deeply engraved the thoughts, ideas and psychology of Chinese society; this indicates that China has to initiate its human rights construction when the majority of people lack rational human rights awareness, therefore necessitating the exploration of development path compatible with China's national condition.

Third, China's human rights development must be viewed with a developing perspective. This can partly be attributed to the long-term process of human rights development that cannot be perfected overnight and therefore necessitates constant endeavor for compatible approaches and measures under China's current circumstances; it also has to do with the relatively weak economic foundation China is subject to in its human rights development. China's human rights protection has to improve along with the economic growth where historical background, economic development, culture and education are fully accounted in its constant promotion of institutional transformation and conceptual innovation.

Fourth, the leadership of the Communist Party must be upheld in China's human rights development. The Communist Party is the only ruling party in China which indicates that human rights are fundamentally conditioned by the self-consciousness of the ruling party which, along with the government under its guidance, is the advocator as well as practitioner of human rights development. Only when the ruling party has established human rights awareness, can substantive breakthrough be possible in China's human rights development.

IV. Patterns and Approaches in China's Human Rights Development

The arrival of stable growth phase marks a new starting point in China's human rights development, as China has figured out a human rights path adaptive to its national condition and is striving for the human rights pattern carrying national characteristics. Here are the main patterns and approaches in China's human rights development based on the current development trends:

The extensive cultivation of human rights awareness and its internalization into Chinese people's daily life comprise the basis and prerequisite of human rights development with Chinese characteristics. Human rights originally are the values deeply rooted in human consciousness. Only when the majority have developed the self-awareness can it be possible to internalize the ideas of human rights respect and protection into the advancement of Chinese society. Though the likelihood is not ruled out that related human rights institutional construction can, to some extent, contribute to the cultivation and internalization of human rights awareness, the absence of self-consciousness of a clean government renders it almost

impossible to nurture the political and cultural ecology giving due respect to human rights in face of the well-established top-down human rights protection mechanism.

The people-oriented philosophy is the core mission and ultimate value of China's human rights development. Human rights development is the outcome of the organic integration of concepts, institutions, national will and social consensus which ultimately manifests itself in individual development and progress. In other words, in an ultimate sense, human rights development, rather than the ultimate purpose of human pursuit, aims to protect people's unfettered and comprehensive development. The 5,000-year history of feudal autocracy in China, along with the lack of rational and self-conscious human rights awareness in the overwhelming majority, inexorably designates the leading role of the government in the cultivation of human rights awareness and in the formulation of institutional arrangement. The government is further required to conduct its exercise of power in conformity with the people-oriented mission. Note that people as discussed here do not refer to a certain individual or social groups with particular interests, but the overwhelming majority that make up the country and social subjects. The substantive progress in human rights can only be recognizable when these people get access to the benefits of economic development based on the people-oriented political values.

Progressive phase-in is the basic pattern in China's human rights development. Since the reform and opening-up, it has been China's important experience to explore human rights development through trial and error and eventually actualize progressive human rights development. It is China's unshakable conviction that human rights development cannot be accomplished overnight and that any proposal in hope of comprehensive improvement of China's human rights condition overnight is either unrealistic or ulterior. As a result, it has been China's option to prioritize people's rights to life and development and then advance to enrich their social, economic and cultural rights as well as civil and political rights. At the same time, China has never valued one single right at the expense of others during the progressive phase-in; rather, its common practice has been the constant adjustments of human rights cores in response to the social and economic development in an effort to realize people's all-around development. Moreover, China's initiatives go beyond human rights protection and proceed to ameliorate the environment and ecology for human rights, therefore enabling more solid political, economic, cultural and social foundation for human rights development. The progressive and coordinated human rights development has been the essential experience for China's human rights development during the past 30 years and will continue to be the basic pattern of China's human rights construction.

The concerted promotion by the "trinity" comprising the leadership of the ruling party, the guidance of the government and the social participation is the principal requirement and fundamental approach of China human rights development. When it comes to human

rights development in the new stage, it is crucial that the ruling party continue its leading role in the management of the overall operation, the planning and orientation of the macro mentality and strategic direction. Equally significantly, the government shall intensify human rights institutional construction, constantly fortifying the authority and enforcement of these institutions, motivating the extensive and orderly participation of the public, enabling the social consensus on rational and orderly human rights development as well as creating the new pattern of China's human rights cause by virtue of the concerted promotion of the trinity.

Multi-level, comprehensive and systematic features are the basic properties of China's human rights development. Human rights development, instead of a unitary concept, is a notion with multiple attributes of value in conceptual, institutional and procedural perspectives, including political, economic, cultural, legal, ethnic and operational properties. This entails a grasp of human rights construction in a multi-level and all-around manner. In addition, multi-level, comprehensive and systematic human rights construction requires, along with the advancement of human rights protection, not to neglect the radical elimination of economic and social soil hampering human rights development and keep China's human rights development in pace with the national growth and aspiration for restoration.

The inclusiveness under the premise of free will is the significant external feature of China's human rights development. Despite the fact that China's human rights development derives from its national condition and unique political practice, it shall never operate and proceed in a political vacuum. Inclusiveness stands to be one of the important features of China's human rights development. For China, a country that starts its economic development relatively late and has undergone twists and turns in its political advancement, it is the corollary to inclusively draw on beneficial experience of human rights protection in the international community and particularly respect and accept international human rights norms. Note that the inclusive attitude has to be prudent, differentiated, selective and compatible with China's national condition.

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A Brief Talk on China's Human Rights Theory Research and Innovation

Gu Chunde
China

With reform and opening up well in place for over 30 years, the retrospect of the tough process China's human rights theory research and innovation have come through, comprehensive display of its theoretical achievements in this respect and the vision of China's human rights theory development carry significant theoretical and practical implications for the promotion of China's human rights theory and its scientific development of human rights cause.

I. The Hard Course of China's Human Rights Theory Research and Innovation

Generally, China's human rights theory research and innovation have undergone four stages for the past over 30 years of reform and opening up.

1. The first stage – from the Third Plenary Session of the 11th CPC Central Committee to 1988

The early days since reform and opening up were haunted by the lingering fear of "cultural revolution;" its abuses of democracy, rule of law and human rights naturally gave rise to the call for genuine democracy, rule of law and human rights. As explicitly stated in the *Report of the Third Plenary Session of the 11th CPC Central Committee* (Dec. 1978), "civil rights stipulated by the Constitution shall be firmly defended and shall not be violated by anyone." Items on people's basic human rights in 1982 Constitution added up to 28, unprecedentedly high for the time being. Meanwhile, initial discussion on human rights was launched in the theory circle and articles on human rights theory began to make successive appearance on newspaper and magazines. It does not take much effort to pinpoint the keynote of these articles as far as the content was concerned: human rights were regarded as no more than political slogan and ideology for hypocritical bourgeois; the insistence on the respect for human rights amounted to the blatant demonstration to the party and the government. This notion didn't come without skeptics who otherwise viewed socialism and human rights as essentially integrated and believed that the fight for and protection of human rights continued in the socialist period.

2. The second stage – from 1989 to the end of 20th century

Complicated international background interplayed with China's human rights theory

research and innovation during this period. Back in the early 1980s, the US proposed and implemented "human rights diplomacy" aiming at the westernization, differentiation and disruption of socialist countries. China became its new target after the drastic changes that had taken place in Soviet Union and Eastern European socialist countries. Every opportunity was taken advantage of by them to launch human rights attack, charging China with human rights violations. In face of the tough international situation, it was imperative for China to promote its human rights education and undertake research on theoretical issues of democracy in an effort to meet this challenge, smash western countries' plot of westernizing China and expose the essence of their "human rights diplomacy." Marxist basic viewpoints were resorted to in explaining democracy, freedom and human rights in a correct and reader-friendly way, therefore unrelentingly exposing the hypocritical and deceptive nature of western democracy, freedom and human rights. For this end, the State Council Information Office published *Human Rights in China* in November 1991 – China's first official document on human rights as well as its first human rights white paper. It was also the first time for China to invoke the term "human rights" in this document, justifiably holding high the banner of human rights and demonstrably declaring that human rights were by no means the monopoly of bourgeois and that the realization of full human rights in the broadest sense had been a long-cherished ideal for mankind as well as a long-term historical mission for Chinese people. The long struggle of Chinese people for the past decades had rendered radical change in China's human rights condition. China made its announcement of its position, viewpoints and policy on human rights issues and unequivocally proposed "the right to subsistence as the priority of Chinese people's human rights." Such changes carried significant implications. It not only erected a favorable national image for china who acknowledged, respected and upheld human rights while breaking the "forbidden zone" in the theory circle where human rights issues remained a taboo before, but also shed a light on China's human rights theory research and lied down the theoretical foundation, thereby forcefully speed up human rights theory research in China.

It is worth noting that the report of the 15th National Congress of the CPC stipulated unambiguously: "the rule of the Communist party lies in guiding and supporting its people to manage the state power as well as undertake democratic election, democratic decision-making, democratic management and democratic supervision, with a view to ensuring its people's entitlement to extensive rights and freedom along with the respect for and protection of human rights." As a result, the notion of "respect for and protection of human rights" had been elevated to what equaled the mission and principle of our ruling party and became the fundamental guiding philosophy and main subject in the theory circle, thereby advancing extensive initiatives in human rights theory research and innovation.

3. The third stage

China's human rights theory research and innovation came into its third stage at the beginning of 21st century. The mission was reiterated in the report of the 16th CPC National Congress "to perfect democratic system, diversify democratic forms, enlarge people's organized political participation, ensure the legal conduction of people's democratic election, democratic decision-making, democratic management and democratic supervision, entitle people to extensive rights and freedoms, respect and protect human rights." It was also during this congress that "respect for and protection of human rights" was added to *Constitution of the Communist Party of China*. "Perfection of democratic system, diversification of democratic forms and enlargement of people's organized political participation" as emphasized in it is the due obligation and basic requirement for people's civil rights and political rights, consequently bound to become the new subject in human rights theory research.

The Constitution amendment passed at the Second Session of the Tenth National People's Congress in 2004, for the first time, officially wrote the commitment into the continuation that the state "respects and protects of human rights." Since then respect for and protection of human rights, have become will of the people and the nation as well as a basic principle of the Constitution. The constitutionalization of human rights urged the theory circle to delve deep into the intrinsic relation between human rights and the Constitution, identify their natures and characteristics, reveal the rules by which the two originate and develop as well as clarify their mutually reinforcing interaction.

The 17th CPC National Congress report further developed human rights theory with Chinese characteristics, mainly including the formation of human rights concepts centered on people's rights, the enrichment of democratic views, the updated equality philosophy and comprehensive human rights values. The mission as stated explicitly in the report is "to perfect democratic system, diversify democratic forms, enlarge democratic channels and safeguard people's rights to information, expression, participation and supervision." Social construction oriented at people's livelihood improvement is stressed, by way of "promoting social fairness and justice and ensuring all people's full rights to education, employment, medical and old-age care and housing." "Respect for and protection of human rights and safeguard of all people's equal rights to participation and development in accordance with law"[1] are also the focus of attention in this report.

On the 60th anniversary of *Universal Declaration of Human rights*, Chinese President Hu Jintao, in his letter to China Society for Human Rights Studies, made a correct evaluation of the declaration along with its impacts. He spoke highly of the historic progress and development China has made in its human rights cause. It was advocated to uphold the human-oriented philosophy and the universality of human rights while proceeding from the actual national condition or deviating from the priority on people's rights to subsistence and

development when it comes to the protection of human rights. He also reiterated the task of safeguarding all people's equal rights to participation and development based on a fast and balanced social and economic development.[1] This is the strategic mission of China's human rights cause as well as its guiding concepts and principles in human rights theory research and innovation.

4. The fourth stage

A milestone moment came on April 13th, 2009 when, under the approval and authorization of the CPC Central Committee and the State Council, the State Council Information Office issued *National Human Rights Action Plan of China (2009-2010)*. It is China's first systematic and policy document for promoting comprehensive development of its human rights cause, signifying a new stage in China's human rights cause along with its human rights theory research and innovation.

II. Major Theoretical Achievements in China's Human Rights Theory Research and Innovation

Over the years, by virtue of the motivation of China Society for Human Rights Studies and dedications of human rights theory researchers, China's human rights theory research and innovation have forged ahead and born rich fruit. According to incomplete statistics, major newspapers and journals in China have published more than 1,500 articles and translation works, over 100 academic books and translated pieces, along with over 50 data compilation and collected papers. These achievements involve every aspect of human rights theory and practice at all time and all over the world. Scholars have reached agreements on some basic human rights issues. They also have put forward and explained some new ideas and proposals, therefore excluding the limitation of western human rights theory and enabling further development on basic human rights theory.

First, the subjects of human rights are extensive and universal.

Human rights, in brief, are rights of being human, and the prerequisites of being human involve necessity for people's subsistence, exclusion of harmful situations caused by others, the conditions allowing for personality development and personal contribution to the groups. Human rights, to a large extent, are "the due and equal political and social status for all people, or at least all citizens within a country or all members in a society,"[2] rather than the privilege of the minority. In this sense, we can define human rights as the fundamental rights and freedoms each individual within a certain society, according to his nature and dignity, is entitled to, such as freedom, equality, property rights, rights to subsistence and development. There is no denying that human rights are the product of history; so are human

1. Hu Jintao's Letter to China Society for Human Rights Studies, *People's Daily*, Dec. 10, 2008.
2. *Karl Marx and Frederick Engels Selected Works*. Vol. 3, p. 143.

rights concepts. Different social and historical times have come up with varying kinds of generalizations and formulations that evolve and advance with the accruement of people's knowledge. Note that the subjects of human rights are extensive and universal; either subjects of individual human rights or collective human rights should embrace "natural persons," "people," "civilians," "citizens," "nationals," "nation," "race," "social groups," etc. Consequently, when it comes to human rights subjects, it is preferable referring them to "everyone," "each person" or "all members in a society" which more explicitly demonstrate their universality.

Second, the nature of human rights is multifold: they are natural and social, historical and class-conscious, moral and legal, deserved and actual.

But nothing characterizes human rights better than their universality and particularity. The universality of human rights refers to basic rights everyone should have access to, mainly manifesting itself in human rights subject, content and ideal. The particularity of human rights dictates that current international situations, national historical and social conditions have to be accounted for in the realization of human rights. It is the differentiation and distinctness of national conditions, history, cultural, race and development pattern that make human rights particular. The universality and particularity of human rights are mutually reinforcing. It is essential to hold due respect for human rights and stay close to national actual conditions, thereby achieving organic integration of the two fundamental factors. It is faulty to separate universality from particularity in relation to human rights while the undue emphasis on universality and denial of particularity are no less mistaken than the biased stress on particularity and repudiation of universality. Note that universality of human rights does not equal universal human rights; particularity of human rights is no equivalent to particular human rights either. It is concrete rather than abstract human rights that have existed and evolved throughout history.

Third, the organic integration of every right into human rights constructs a multi-content, multifaceted, multi-angle and multi-level human rights system.

Human rights embrace not only civil and political rights, also embrace economic, social and cultural rights; not only individual human rights, also collective human rights. Individual human rights constitute the foundation of collective human rights which are the product of organic synthesis of the former; it is the extension of individual human rights that renders possible collective human rights. The subjects of collective human rights range from race, nation to groups and the content primarily has to do with national self-determination, environmental rights, development rights and rights to peace. It takes collective power and concerted dedication of the international community in the materialization of collective human rights. Meanwhile, human rights are multifaceted, multi-angle and multi-level. Human rights system (or human rights mode of existence) consists of four levels of rights: deserved

rights, actual rights, moral rights and legal rights. Moreover, the system is not static, but open to constant change. With economic development, social progress, improvement of people's livelihood, enhancement of democracy and rule of law, new rights are bound to emerge, thereby enriching and bettering the current human rights system. These rights include rights to information, participation, expression and supervision as well as equal rights to development, democratic election, democratic decision-making, democratic management and democratic supervision. The development of civil and political rights has to be coordinated with the progress in economic, social and cultural rights; preservation and safeguard of both collective human rights and individual human rights must be given equal consideration.

Fourth, the right to subsistence and the right to development are the primarily basic human rights, without which other human rights for a country or nation would amount to mere fantasy.

National independence, on the other hand, serves as the guardian of the two fundamental rights. The right to subsistence suggests that a human should, in certain historical and social context, have access to basic conditions required by his subsistence. The right to subsistence is comprehensive, socio-historical, individual as well as collective. The right to development refreshes that "every person and all citizens are entitled to participate, promote and enjoy economic, social and political development." It is not only the development of individuals or individual human rights, but also collective human rights, the progress of groups, a nation or a country. The right to subsistence and development are inseparable, mutually inclusive in content and reinforcing in practice. The right to subsistence is the prerequisite and foundation for the right to development; and it is the extension of the right to existence that comes to the right to development which, in turn, serves as the protector of the former. Hence, the maintenance of people's right to subsistence and development must be prioritized when it comes to the preservation of human rights.

Fifth, human rights are the unity of rights and obligations, two interrelated factors that restrict each other.

Rights acknowledge, respect and guarantee the conditions and abilities required to lead a normal life for each member of a society; obligations indicate each member of a society, without any exception, must acknowledge and comply with current moral and legal regulations. Human rights, in fact, intrinsically embrace the two indivisible factors. It is necessary that each member of a society enjoys equal rights and assumes equal obligations to others and the society as a whole. Both domestic human rights acts and international human rights documents have stipulated everyone's rights and corresponding obligations. "There is no right that doesn't come with obligation; and vice versa."[1] Rights free from obligation

1. *Karl Marx and Frederick Engels Selected Works.*, Ed.2, Vol. 2, p. 610, Beijing, People's Publishing House, 1995.

are nothing but privilege and obligation excluding right amounts to mere enslavement. Only when right and obligation are organically integrated can they comprise genuine human rights. The relations between right and obligation, right and power have to be identified. Right and obligation are dialectically unified; any "obligation-oriented" or "right-oriented" practice is biased and incorrect, for it forcefully separates right from obligation and sets up between them a false dichotomy. Right and power also make up a dialectical unity, as power derives from right and right places constraints on power. Consequently, the regulation of public power has become a necessity when it comes to the preservation and extension or private rights (human rights).

Sixth, as evidenced by China's human rights practice, stability serves as the prerequisite for, development as the key to and rule of law as the guarantee of the realization of human rights.

In china, stability is of overriding significance, without which economic development, social progress and materialization of human rights can never be achieved. Development, the absolute principle and top of priority on the ruling party's agenda, stands as the solution to all problems in China and key to the realization of human rights. Therefore, it is imperative to, on the basis of the sound and fast economic-social development, promote China's human rights cause in a scientific, balanced, comprehensive, concerted and sustainable way. Rule of law is the principle, strategy and philosophy of ruling the country, with the core value lying in the limitation of government power and preservation of human rights. It is the indispensable guarantee in the realization of human rights. Laws, which are stable, formation and mandatory assume irreplaceable status in the materialization of human rights. In that sense, it is imperative to maintain and implement rule of law in governing the country, speed up our construction of a country under the rule of law, and strengthen the legislation, law enforcement and judicial protection in relation to human rights.

Seventh, the long-term human rights practice has testified the correctness to promote and preserve international human rights cause through communication and cooperation.

Human rights concept and thoughts, in essence, are the product of interaction among economy, politics and culture in a certain social context. Discrepancies on human right issues among nations should be regarded as natural and normal, given the diverging national history and conditions along with the diversity of the world. Human rights notions and proposals with different political, economic, social, history, religious and cultural backgrounds should be held in respect and given full consideration. It is also expected of each country to, in line with the principle of equality and mutual respect, promote mutual understanding, expand common ground, narrow differences and seek common development. China advocates excluding confrontation or hegemony and handling human rights issues by

way of communication and cooperation based on equality and mutual respect. China has successfully deepened mutual understanding and promoted common development through its multilateral or bilateral conversation and collaboration on human rights issues with western countries. Chinese government and Chinese people would continue to strengthen international cooperation for human rights and, together with people all over the world, make their contribution to the healthy development of world human right cause, construction of long-standing peace, realization of common prosperity as well as creation of a harmonious world.

III. A long Way ahead for China's Human Rights Research and Innovation

China has witnessed remarkable theoretical achievements in human rights theory research and innovation during the past over 30 years of reform and opening up, rendering possible theoretical support for its human rights cause. Undeniably, however, China's human rights theory research and innovation do not suffice to keep up with China's socialist modernization, match its growing comprehensive national strength and international influence, meet the challenges by ever-changing international political and economic situations, and satisfy people's desire and aspiration. Still, China has a long way to go in promoting its human rights theory research and innovation to stand up to the ordeal.

First, China's human rights research and innovation must adhere to the guidance of socialist theoretical system with Chinese characteristics consisting of Deng Xiaoping Theory, "Three Represents Theory" and scientific outlook on development.

Correct political direction has to be steered, and coordinated and balanced development sought in an effort to make improvements in scientific, theoretical, comprehensive and systematic human rights theory research and innovation. Equal consideration should be given to human rights issues home and abroad; related issues both in the history of China and foreign countries should be equally accounted for. While staying close to national and international situations, current China's human rights theory research and innovation must be undertaken around human rights concepts as stated in the *17th CPC National Congress Report*. Significant importance must be attached to the research on scientific development, social harmony and human rights practice; the task also includes the promotion of social construction centering on people's livelihood improvement, the enhancement of democracy and rule of law, the diversification of democratic forms, the expansion of democratic channels along with the enrichment and perfection of human rights protection of "Chinese pattern." The long-term mission of China's human rights theory research and innovation sticks to the construction of human rights theoretical system with Chinese characteristics, therefore providing scientific, systematic and comprehensive theoretical support to advance healthy human rights cause in China and the world.

Second, it is imperative that China's human rights theory research and innovation proceed from its national condition, that is, the country is in the primary stage of its socialism.

China is now and will be for the years to come at the early stage of its socialist construction best characterized by low level of productivity. The phase of economic development determines the distinct stages in political and human rights construction which, in turn, dictates the phased nature in China's human rights theory research and innovation. The comparison between human rights condition and theory in China's primary stage of socialism and those in advanced stage of socialism or in even more developed stage of capitalism would only lead us to biased conclusion that China's human rights condition and theory are inferior. It is our belief that, China's current human rights condition and theory, well corresponding to its national condition and productivity at present, are the most excellent, most advanced and most scientific. Admittedly, new China's human rights condition is not satisfactory; human rights mechanisms await reform and improvement; disagreement exists in human rights theory and the theory calls for further exploration and research. Nevertheless, either the reform and improvement of human rights protection mechanism or deeper exploration and research on human rights theory should never transcend China's primary stage of socialism, but instead stay compatible with the current productivity level, seek coordinated and balanced development and fully implement human-oriented scientific development concepts.

Third, excellent achievements of all human civilizations that include beneficial factors of humanitarian values in China's history and culture as well as human rights theory and practice of countries all over the world should be learned from for promoting China's human rights theory research and innovation.

The arbitrary acceptance of western human rights theory and practice is no less faulty than total repudiation. Research and analysis must be carried out on a case-to-case basis, exposing and criticizing the biased and unscientific parts and distinguishing western human rights and human rights values from Chinese ones. The rational and advanced parts, on the other hand, deserve full acknowledgement, absorption and assimilation with a view of adding intellectual and theoretical resource to the development of China's human rights and human rights values. Note that any mechanical copy or application of western human rights theory and practice must be strictly avoided. When it comes to absorbing and assimilating advanced and rational western human rights notions and values, a cautious approach is required; discarding the dross and selecting the essentials, eliminating the false while retaining the genuine; The initiative has to proceed from China's national reality and contribute to the promotion of its reform, opening up and modernization; it should be in a strong position to accelerate the full implementation of rule of law and construction of a country under the rule

of law; it is also expected to advance China's human rights cause and enable scientific human rights values centering on people's rights, therefore safeguarding, enriching and preserving Chinese people's human rights; in addition, a link has to be created between this act and China's human right practice which serves as the primary source of human rights theory with Chinese characteristics and the exclusive standard by which the theory is tested.

Fourth, the far-reaching mission of China's human rights theory research and innovation consists in the construction of human rights theoretical system of Chinese socialism, an indispensable part of theoretical system of Chinese socialism.

With socialist right-oriented human rights values as its core and under the guidance of scientific outlook on development, the human rights theoretical system must be directed by the statements of Deng Xiaoping, Jiang Zemin and Hu Jintao on human rights issues. Its content should be extensive, including China's human rights concepts and features, origination and development, rights system, China's human rights and the Constitution, China's human rights and rule of law, China's human rights and the harmonious society, China's human rights and scientific outlook on development, protection mechanism of China's human rights, human rights institutions in China, Chinese people's rights to life and development, their political rights, their economic-social-cultural rights; human rights for Chinese special groups as well as the basic policy of Chinese government in its communication and cooperation on human rights issues, etc. Such human rights theoretical system must fully embody fundamental features at China's primary stage of socialism, its contemporary characteristic and spirit, and significant achievements and basic experience in China's human rights construction. Human Rights theoretical system of Chinese Socialism is a multi-level, open, scientific, organically-integrated whole in constant change and improvement. With the consolidation of social and political construction, comprehensive implementation of rule of law and the advancement of China's human rights cause, enrichment and perfection are certain for this system, thereby providing greater theoretical support to China's human rights cause.

Fifth, it is imperative to mobilize experts and practitioner to take initiative in the exploration and research of human rights issues in order to promote China's human rights theory research and innovation.

We believe human rights theory to be multidisciplinary, covering a wide array of fields ranging from politics, philosophy, economics, legal science to sociology, therefore calling for joint endeavor of experts in each field and dedication of the entire theory circle in an effort to realize outstanding achievements and materialize human rights theoretical system of Chinese socialism ahead of schedule. Accordingly, a strong sense of mission and responsibility is required of human rights theorists to innovate human rights theory, spread human rights knowledge and promote human rights development. Note that human rights issues, to a large extent, are not merely theoretical, but highly practical where active involvement of

practitioners is indispensable as to transform theories into practices. The responsibility lies on their shoulder to stick together and cooperate closely to engage in human rights theory research and make their contribution to realize human rights theoretical system of Chinese socialism. China Society for Human Rights Studies is also recommended to well organize, coordinate and assist China's human rights theory research and innovation.

In a nut shell, as human rights theorists, it is essential that we, while adhering to the guideline of scientific outlook on development and staying close to national and international conditions, delve deeper into human rights theory carrying Chinese characteristics from progressive and innovative perspectives, enrich and improve human rights protection mechanism of Chinese pattern; the integration of research resource, expansion of research fields, enrichment of research angles to push forward human rights theory research are equally indispensable; our mission also involves the integration of history and reality, theory and practice, concept and institution in structuring human rights theory system of Chinese socialism so as to accommodate to our practice and our era as well as offer more powerful theoretical support to human rights cause in China and the world.

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China's Foreign Aid over the Past 60 Years: Carrying Forward Traditions and Braving Challenges

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China

This year marks the 60th year of China's efforts in foreign aid, which has gone through various hardships and obtained praiseworthy achievements over the 60 years. Foreign aid is an important component of a nation's foreign policy. While serving the strategic foreign objectives of the country, China's foreign aid has also contributed to economic and social development of developing countries and to maintenance of peace and stability worldwide. Different from Western countries in practice and philosophy, China's foreign aid practice is unique; it stems from China's history and culture, as well as its own experience in development. With the progress of the world and China, China's foreign aid has to face new problems and brave new challenges.

I. The Difference between China and the West in Foreign Aid Practice and Philosophy

After the Second World War, foreign aid began to be widely used as an instrument of foreign policy. Western countries have been providing foreign aid for a long time, and have established relatively complete aid mechanism. According to OECD statistics, their assistance to under-developed countries reached USD 500 billion, between the end of WWII and mid-1990s. However, Western countries admitted themselves that their aid over the decades was not successful in the real sense of the word. Aside from failure to bring about conspicuous changes in the recipient countries, it incurred repulsion from some of them. Domestically, the public were dissatisfied with the results of foreign aid launched by the government. Since the 1980s, especially after the termination of Cold War, Western countries began to reach a new consensus on the philosophy of foreign aid, that is, emphasis should be placed on the good governance and capacity building of recipient governments; commitment by recipient governments to human rights, democracy, good governance and other factors should be taken as the conditions for granting foreign aid, and the decision to grant assistance or the amount of assistance should be dependent on their reception of the conditions proposed and their achievements. Due to their status and influence in international aid, and their self-centeredness cherished all along, Western countries have taken this consensus as

the yardstick for foreign aid to all countries.

Since the People's Republic of China started offering foreign aid in 1950, soon after its foundation, a total of 60 years has elapsed. Over the 60 years, China's foreign aid has won wide acclaim among recipient countries and meritorious reputation in the international community, despite the fact that it is smaller than that of developed countries in the West. China has carved out a unique path in foreign aid.

In 1950, shortly after its foundation, the People's Republic of China selflessly assisted DPRK (Democratic People's Republic of Korea) and Vietnam in their anti-imperialism war, despite various domestic projects awaiting construction. After the 1960s, it generously assisted African countries in their campaign for national independence, and launched economic aid to adjacent developing countries and newly independent African countries. After the 1970s, it offered enormous disinterested assistance to developing countries, represented by construction of Tanzania-Zambia Railway. Since 1980s, China's foreign aid entered an adjustment period as the country began to focus on economic development and launch reform and opening-up. By mid-1990s, based on the fundamental principles for foreign aid, China had formulated diversified foreign aid practices including free economic aid and humanitarian aid, under guidance of the new model for foreign aid featuring mutual benefit, and joint venture and cooperation. Since the advent of 21st century, China has been actively blending into the international community and has committed to be a responsible country. Accordingly, its foreign aid efforts are stepped up. Study the history of China's foreign aid over the 60 years and we can see that it is significant in safeguarding world peace, promoting development, guaranteeing national security and improving the international status of China.

Despite continuous adjustment in concrete policies and practices, China's foreign aid has abided by the same fundamental philosophy, whose central content includes mutual respect, equality, aid without additional conditions, cooperation for mutual benefit, mutual development and win-win situation. This philosophy not only pooled the diplomatic thinking and wisdom of the older generation of revolutionists in China, but also summed up its experience in foreign aid and diplomatic practices. In the meantime, it also reflected the influence of traditional Chinese culture on foreign aid. The Eight Principles for foreign aid proposed by Premier Zhou Enlai in 1960s and the four principles (equality and mutual benefit, pursuit of substantial results, diversity in form, common development) for foreign aid after China launched the policy of reform and opening-up in 1980s reflected the fundamental connotation of China's philosophy for foreign aid.

II. Tradition and Characteristics of China's Foreign Aid

The peculiarity of China in foreign aid theory and practice demonstrates the influence

of the Chinese historical tradition and civilization. The traditional philosophies like "do unto others as you would be done by," "put oneself in the position of another," "always be true to your words and behavior," "put others first" and "be kind to others" emphasized in traditional Chinese culture, and practical experience gained in the process of modernization are sufficiently reflected in China's foreign aid philosophy and practices over the years.

In China's foreign aid policies, we are very familiar with the Eight Principles proposed by Premier Zhou Enlai in his visit to African countries in 1964, but maybe some of us don't know that previously, i.e., in August 1963, Premier Zhou Enlai also proposed four principles for foreign aid. In the interview with visiting Somalia Premier Shermarke, he elaborated the four fundamental principles for providing economic assistance to Asian and African countries.

1. We don't require any privilege or political conditions for our assistance. That's what imperialism and chauvinism would have done. You should take this as the yardstick to measure our efforts. Nonconformity would mean mistakes on our end.

2. Our assistance aims at facilitating your efforts to gradually establish independent national economy, not impeding it or creating your dependence on other countries, including China.

3. No matter it is dispatching experts to your country or accepting your students to study in China, our objective is to gradually cultivate construction talents of your own. Our help will be transitional, and once you are self sufficient, we will withdraw our help, so as not to increase your dependence on us. No matter it is students or field-trip workers sent to China, or personnel dispatched to Somalia by China, local living standards should be taken into consideration. Our personnel, whether they are engineers or technicians, should be entitled to treatment for their counterparts in your country only.

4. Our assistance should be dependent on our own capacity. We can't promise you what we cannot possible do. If the equipment provided by us is defective in quality, we will ship it back for replacement.[1]

The four principles sufficiently reflect the excellence of traditional Chinese culture. Guided by those principles, China's foreign aid has attained peculiarity. Take its assistance effort in Africa for example, we can see the following characteristics:

a. Self-denial in helping others, hardship enduring, and considerate

China has won wide acclaim for enduring hardships and selfless devotion in exercising foreign aid. Take construction of Tanzania-Zambia Railway for example. Back then, China undertook the task when the West and the Soviet Union refused to lending a helping hand. The Presidents from Tanzania and Zambia urgently wanted a railway between the two

1. "The Diplomatic Philosophy and Practice of Zhou Enlai," World Affairs Press, 1989: pp. 138-139.

countries so that the newly independent Zambia, an inland country, could ship its copper ore overseas without going through South Rhodesia (Zimbabwe) controlled by the West, and Tanzania could ship its mineral products from the south for economic development.

Tanzania President Nyerere tentatively asked for assistance from Chinese Chairman Mao Zedong and Premier Zhou Enlai, much to his surprise, his wish was granted. From survey in 1968 to completion in 1976, foreign aid personnel from China conquered insurmountable obstacles and went through all sorts of hardships in construction of the railway. The railway had to cross sparsely populated virgin forest teeming with outbreak of disease, wild animals and mosquitoes. Many places are swamp lands. A total of 65 foreign aid persons from China gave their life in the 8 years of aid and construction. An engineer from the West was overwhelmed after visiting the railway, saying that only people with experience building the Great Wall could have built such a quality railway.

b. "Capacity-building" assistance

China is an aid-giving country and a recipient country in that it accepted assistance from other nations and international organizations. In accepting external aid, China realized that what recipient countries need is assistance for achieving self-sufficiency and independence. That is, instead of incessant "blood transfer," they need "blood generation" capacity, so as to eventually break away from dependence.

Accordingly, put itself in the place of others, China placed an emphasis on construction and promotion of industrial capacity and human resources of recipient countries in its foreign aid practice. For instance, China National Petroleum Company (CNPC) emphasized cultivation of local technical personnel and capacities in its joint-venture cooperation project with Sudan. Investigation found that in Sudan there were Sudanese technical personal on all technical posts in the petroleum industry, and Sudanese technicians were quickly catching on under guidance and training from Chinese engineering and technical personnel. In one case, a reporter saw a Chinese technician asking a local worker to dissemble and assemble a piece of equipment consecutively for three times, and asked him for the reason. Upon which, the technician answered that in this way the Sudanese worker could better master relevant techniques.

The considerate thinking mode and behavioral mode characteristic to Chinese made them open and serious in offering assistance. According to statistics, CNPC started cooperating with Sudan in developing local petroleum resources in 1995. By 2005, Sudan had developed a complete system covering the entire petroleum industry, from oil prospecting to well drilling, from crude oil exploitation to processing to petrochemical products.

Aside from producing gas, diesel and aviation kerosene, Sudan had developed processing industries for plastics and so on. Its oil products could not only meet domestic demand, but also have surplus for export. Compared with Iran and Iraq where Europe

and America started oil exploitation longer ago, Sudan is much farther ahead in satisfying domestic demand for product oil.

c. Aid with No Additional Terms

The Chinese are well acquainted with a saying by Confucius, "Do unto others as you would be done by." As a developing country, China has long been an aid-giving country and a recipient country. As a recipient country, China does not accept any aid with additional political conditions. Therefore, while offering assistance to other countries, China has never imposed any terms.

Seen from its economic and social development process, China has always held fast to the principle of paddling its own canoe. Foreign aid and cooperative development are resultant from mutual intentions and needs, and should be conducted on the basis of equality and mutual respect. The problems facing recipient countries should be solved through negotiation and communication; cooperation and assistance should not be dependent on whether the recipient party accepts certain political conditions. All along, China has been probing a modernization road from its own national situations. Others' suggestions may be used for reference, but not as the conditions for accepting external aid, or the golden rule for directions.

d. Assistance benefiting local people

Assistance from China is efficient and emphasizes substantial results. Seen from the results, it has played an active role in promoting local economic and social development and improving local people's livelihood. Agriculture and food security are major issues facing Africa. Early in 1960s, China has successively assisted Guinea, Mali, Tanzania, Congo, Somali, Mauritania and other countries in building agricultural technology experimental stations, promotion stations and ranches, helping the countries to develop rice, tea, and sugar cane industries.

Since 1970, China has offered agricultural aid to the majority of African countries. In recent years, China has emphasized agricultural technology support and development for Africa, aside from enhancing assistance efforts. On the Fourth Ministerial Conference of the Sino-Africa Cooperation Forum in 2009, Premier Wen Jiabao proposed that efforts should be made to improve Africa's capability for food security and further strengthen Sino-Africa agricultural cooperation. This year, in the high-level conference of the UN Millennium Development Goals, Premier Wen promised that in the five years to come, China will dispatch another 3,000 agricultural specialists and technicians, offer 5,000 agricultural training opportunities in China, and strengthen cooperation in agricultural planning, hybrid rice, aquaculture, irrigation projects, agricultural machinery and so on.

Guinea-Bissau is a concrete example. Agricultural assistance provided by Yichang City, Hubei Province to Guinea has entered the fifth phase. With help from the specialist panel

of agricultural assistance, Guinea-Bissau has established fine-grain breeding center and prototype high-yield rice demonstrative bases. Rice production per hectare in state-owned farms has reached 5-6 tons, up from 2 tons before assistance, and that in the farmer's rice-production area has also increased to 4.5 tons, up from 1.5 tons.

e. Strengthen agricultural cooperation with developing countries.

China has established over 200 agricultural cooperative projects in developing countries and dispatched large numbers of agricultural technology specialists, vigorously promoting local agricultural development.

Take infrastructure construction for another example. China's assistance to Africa in construction of electric power, transport, water conservancy and public facilities has been helpful in improving local people's living conditions. Over the decades, the Chinese government has helped other developing countries constructing over 2,100 projects closely linked to people's production activities and livelihood, through free assistance, interest-free loans and preferential loans. China has helped constructing over 620 public facilities, including conference facilities, municipal facilities, gymnasium venues, well construction and water supply projects, schools and hospitals; over 220 agricultural projects and 700 industrial productive projects, covering light industry, textile, electronics, and energy; over 440 infrastructure construction projects, including roads, bridges, railways, power stations, shipping yards, ports, airports and postal communication facilities.

From 1963 when China sent its first foreign aid medical team to Algeria, 47 years has passed. During the period, China has dispatched about 21,000 person times of medical personnel to 69 developing countries and regions, diagnosing and treating an aggregate of 260 million person times of patients. This year, in the high-level conference of the UN Millennium Development Goals, Premier Wen promised that in the five years to come, China will build another 200 schools for developing countries; send 3,000 medical specialists, train 5,000 medical staff, and provide medical instruments and medicines for 100 hospitals, for developing countries to implement health projects for women and children, and prevent and cure malaria, tuberculosis, AIDS and other diseases.

Those assistance provided by China greatly improved the livelihood of local people and improved their living standards, playing an active role in social and economic development of recipient countries. This is promoting local human rights.

III. New Problems and Challenges Facing China's Foreign Aid

From mid-1990s on, China has gradually formulated a foreign aid mode with governmental preferential loans and joint venture cooperation as the major forms, covering free assistance, interest-free loans, human resource training, technological assistance, humanitarian relief, debt reduction and waive and so on, in tune with demands from its own

reform and opening-up, and development of market economy, as well as the changed needs of recipient countries. This adjustment transformed previous situations featuring political cooperation, singleness in economic cooperation mode and free assistance, and began to emphasize mutual benefits and common development. Facts have proven that the new mode of foreign aid is in the interest of both parties within the cooperative relation.

Take the cooperation between China and Angola for example. In 2002 Angola stopped its 27-year civil war. In 2004, China and Angola began cooperation: the Chinese government would offer Angola preferential loans for post-war reconstruction, and the loans would be repaid with petroleum. During reconstruction, Chinese companies extensively took part in its infrastructure construction.

Instead of mere resource development, China simultaneously emphasized improving the industrial viability of the host country, and contributing to local public welfare causes. Aside from railways, roads, bridges and other infrastructures, China established hospitals, schools and water-supply systems for most of the provinces in Angola, including the first stable water-supply system for urban Luanda. Chinese companies helped Angola building 13 schools, benefiting 15,000 youths; undertook construction of 5 power transformer and grid projects, benefiting one third of Angola's population; constructed and renovated agricultural irrigation projects, turning 8,000 hectares of land into stable high-yield cropland; completed 5 water-supply projects, solving water shortage facing 1 million local people.

Angola mode benefits both parties to the cooperation. China obtained petroleum and other fundamental raw materials required for economic and social development, while Angola got preferential loans urgently needed for national reconstruction. With the loans, Angola could carry out infrastructure construction, providing favorable conditions for sustained economic and social development. In the meantime, Angola could learn the advanced technology and management experience from China, nurture human resources, and improve employment conditions related to the social stability.

Under the mode featuring preferential loans and joint venture cooperation, a lot of Chinese enterprises "walked across the national boundary," and started cooperation with African, Asian and Latin-American countries. The achievements are praiseworthy, benefiting both parties to the cooperative relation. However, there are also some problems, which are exaggerated or maliciously propagandized to raise unduly suspicions of China's foreign aid.

In fact, since China adjusted its foreign aid policies and stepped up foreign aid efforts, it has faced new problems and challenges in offering foreign aid, including measures to be adopted in the foreign aid mode featuring joint-venture cooperation to ensure mutual benefit, deal with interest friction, and communicate and coordinate with enterprises, the public and the governments of recipient countries.

The Chinese government has attached great importance to those problems. As for poor

quality and other irresponsible behaviors of some enterprises, the Chinese government has suggested strengthening education and monitoring, and demanding them to contribute more to local public welfare. During his visit to Africa in 2006, Premier Wen Jiabao unequivocally expressed that China should improve its foreign aid policies and methods, and measures should be taken to combat corruption and kickbacks. Premier Wen also stressed that Chinese enterprises should be in line with international practices while striving for projects in Africa, and should be open and transparent in operation. China will not refuse to learn from successful experience of Western countries or to communicate with them in foreign aid problems. However, the imposed title of neo-colonialism will not be acceptable.

Over the 60 years, China has held fast to the same fundamental philosophy for foreign aid, although it has adjusted aid policies and methods. This is testified in the remarks made by Premier Wen Jiabao in his visit to Angola in June 2006. Premier Wen proposed three principles for Sino-Angola economic cooperation: 1. The cooperation should benefit improvement of Angola's overall economic strength; 2. The cooperation should be helpful for Angola to master advanced technologies; 3. The cooperation should be advantageous for Angola's sustainable development and the well-being of people in Angola. From those principles we can see that China still have to maintain the good traditions of foreign aid, and will consistently emphasize the interests of parties to the cooperation and insist on equality and mutual benefit. Never will it loot or control the cooperative party like the early colonists from the West did.

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Hong Kong's Progress in Human Rights Development under the Principle of "One Country, Two Systems"

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It has been 13 years since the Chinese government officially resumed the exercise of sovereignty over Hong Kong on July 1, 1997. According to the (China-UK) *Joint Declaration* and the *Basic Law of the HKSAR*, "the socialist system and policies shall not be practiced in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years." The Basic Law clearly stipulates: "The Hong Kong Special Administrative Region shall safeguard the rights and freedoms of the residents of the Hong Kong Special Administrative Region and of other persons in the Region in accordance with law." In Chapter III of the *Basic Law*, which deals with fundamental rights and duties of Hong Kong residents, it is specially stated that "Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike." They also enjoy personal freedom of communication, of movement within the HKSAR, of entering and leaving the city, of religion, of choosing occupation, of engaging in academic research, literary and artistic creation, and of marriage, etc. And all these rights are protected by the *Basic Law*.

The *Basic Law*, which protects Hong Kong residents' human rights, was passed and made public on April 4, 1990. Nevertheless, Hong Kong was separated from the motherland for 150 years and some people outside Hong Kong and the opposition camp had doubts and were pessimistic about the future of human rights in the city after its sovereignty reverted to China. The doubters often cited as their reasons the "overriding principle of class struggle" that was pursued on the mainland and the fact that the colonial government carried out a policy of so-called "fending off communism with democracy" before exiting the city. At that time outspoken members of the local "opposition" typically declared during visits to the US and Europe that they were "prepared to be arrested and spend the rest of their lives in prison after China resumed sovereignty over Hong Kong."

However, the Chinese government has steadfastly kept its promise to uphold the principle of "One Country, Two Systems" over the past 13 years. All the freedoms and rights of Hong Kong residents have been fully protected as prescribed by the *Basic Law*, as the

SAR Government faithfully implements the principle of "Hong Kong people ruling Hong Kong." The state of local residents' human rights has improved by leaps and bounds under the "One Country, Two Systems" principle. So much so that an influential US magazine that once claimed "Hong Kong is dead" has admitted making a "bad call."

As far as the right to economic subsistence and development is concerned, Hong Kong has been rated as the top free economy in the world by authoritative international academic institutions for 13 years since the city was reunited with the motherland. This means it is relatively easy for Hong Kong residents to grab opportunities for free development and upward mobility if they are good at it. This writer had only a pair of swim trunks when it came to personal belongings when I came to Hong Kong more than 30 years ago. Through hard work I became an executive director of a listed company eight years ago and later a vice chairman and the chairman, with a number of public duty titles to boot. The under-privileged in Hong Kong have seen their safety net – such as welfare allowance, government-subsidized housing and health care – improve over the years, too. All these can be seen as evidence that Hong Kong residents' right to subsistence and development has advanced since 1997.

Hong Kong has also made remarkable progress in terms of civil rights and political rights over the last 13 years, achievements that are widely recognized around the world. Under colonial rule all governors were appointed by the crown in London, leaving Hong Kong residents no choice at all. Today the HKSAR Government chief executive is elected by a selection committee of people representing the whole social spectrum. According to a decision of the National People's Congress, Hong Kong residents will be able to elect both the chief executive and all the Legislative Council (LegCo) members directly by 2020. It will have taken the HKSAR only 23 years to reach this milestone, while Great Britain needed 281 years to achieve universal suffrage in 1688, and the US reached the same goal 195 years after its independence in 1776. The fast development of a democratic system in Hong Kong has in turn raised the level of human rights conditions for local residents.

The city has produced an impeccable record of upholding what local residents consider a part of their core value – freedom of expression, of the press and of publication since July 1997. The opposition front man who openly said back then that he was prepared to spend the rest of his life in prison after Hong Kong returned to Chinese rule has never been prosecuted, let alone spending even a minute behind bars, despite making such outrageous statements as "(If this is high treason,) call me a traitor any time you want." And he has had no trouble at all leaving the city on overseas trips during the last 13 years. Starting in mid-October last year, two of the city's leading newspapers spent the remainder of the month printing all kinds of verbal attacks daily on their front pages against Chief Executive Donald Tsang after he delivered his policy address. Did either of them experience any pressure from the government to stop? No! From August last year to this past June, the opposition camp went full out,

clamoring for a "wholesale resignation of (pan-democratic) LegCo members representing five districts and a people's uprising," which has no statutory basis whatsoever, and "liberating Hong Kong," without any one of them being pursued by the judiciary for what they said. If that was not enough, Chief Executive Tsang even invited the convener of the "wholesale resignation" movement to an hour-long debate on public television, fair and square, proving once again the right to express one's political views is fully respected, probably more so than they deserve in this case, in total disregard to whichever side one is on.

As for Hong Kong residents' right to assembly, procession and demonstration, one needs to look no further than the official figures between 2007 and 2009 to draw a conclusion: in 2007, a total of 3,824 public assemblies and processions took place, with the Police Department expressing objection to just three of them; the total grew to 4,287 the following year, again only three of the applications were turned down by the authorities; last year saw 4,222 such actions in all, none of which was denied the go-ahead. The Hong Kong Police Force has always followed the policy of assisting the public in processions and demonstrations to the best of its abilities and always respects the residents' rights in this concern in a bid to ensure residents' safety during such activities and the smooth progress of such undertakings as long as they do not infringe on others' rights and freedoms.

In addition, Hong Kong's excellent tradition of adhering to the rule of law has been upheld since 1997 as well. The provision in the Basic Law that "All Hong Kong residents shall be equal before the law" has been carried out to the letter. Not long ago the five justices in the Court of Final Appeal unanimously overturned the guilty ruling handed down by a Court of Appeal judge, who happened to be their chief justice in waiting, and set the defendant free on the spot. That the decision was made without any consideration of the fact that it was their future superior's ruling made the case a classic example of justice being blind and not a joke in Hong Kong's judicial system when it comes to protecting individual rights.

No rhetoric, no matter how awesome it sounds, is more convincing than facts. The facts and figures presented above truthfully illustrate the strong protection for human rights in Hong Kong and the heartening progress the city has made in this respect under the principle of "One Country, Two Systems." This fact also shows, in a way, that China has reached an unprecedented level in terms of giving human rights their due prominence. Hong Kong owes its tremendous progress in protecting human rights over the past 13 years to the Central Government, which has kept its word and done everything it could to show that "there are no wishes, nor demands, other than for Hong Kong to remain stable and prosperous."

It is a well known fact that the mainland practices the socialist system but will allow Hong Kong to maintain its capitalist system and lifestyle for 50 years. This shows the Chinese government's enormous capacity in terms of respecting history as well as the reality. It is no coincidence or an isolated case that Hong Kong has made undeniable progress in

human rights protection over the past 13 years and it has the Central Government to thank for these achievements. Just imagine what would have happened if the mainland had not abandoned the "overriding principle of class struggle" in its pursuit of reform and opening policies with the focus on economic buildup; if the nation had not made the historic shift from planned economy to one driven by market mechanism; if the Communist Party of China had not decided to become the ruling party rather than one of revolution; if the "philosophy of confrontation" had not been replaced by the philosophy of harmony, and if the emphasis had not started to shift from the class lineage of human beings to humanity, humanism and human rights awareness. In short, Hong Kong is now part of China. In an indicative manner of speaking, Hong Kong's achievements in human rights development have been closely connected to those on the mainland and in synch with the times, even though there is a huge difference between Hong Kong and the mainland in terms of social system, level of economic and cultural development, the stage of social development and human rights. On the other hand, Hong Kong's experience in human rights development is bound to help the mainland as an example and reference. Hong Kong's experience in human rights development will be particularly helpful to the mainland when the latter puts "the state respects and protects human rights" into the Constitution and sets about to enforce the principle in everyday life.

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New Progress on China's Human Rights from the Perspective of New Trends of Its Social Security System
– Based on the New Developments since the Second Beijing Forum on Human Rights in November 2009

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Social security is an important component of human rights guarantees, despite differences in social security benefits enjoyed by people in China or other countries, or in academic research and practices related to labor and social security laws. China established its social security system in early 1950s, which played a crucial role in protecting its citizens' social security benefits. The major problem for this system was the scope that only covered employees of public institutions, especially in terms of endowment and medical insurance. It was the result of the then national strength and dual economic structure. Reform of China's social security system began in the 1980s. Constant improvements in this system have expanded Chinese citizens' realization of economic and social rights. Over the 30 years, China has seen its economic growth in a high speed. We can say these years also saw the continual reform of the country's social security system, which provided strong guarantees for Chinese citizens' human rights.

I. Two Landmark Breakthroughs in China's Rapidly Developing Social Security System

In the last decade, China has conducted extensive reforms in mainland China concerning social insurance system. There are two landmark breakthroughs in the reform.

First, the coverage of China's social insurance system has extended from employees of public-owned enterprises in the traditional sense to other employment groups, mainly migrant workers and temporary personnel working in a flexible way. The reform involves social insurances among the disadvantaged groups, i.e. medical and work-related injury insurances. For example, China's Ministry of Labor and Social Security promulgated the "Guiding Opinions on Urban Flexible Working Personnel Underwriting Basic Medical Insurance" on May 26, 2003, and the "Notice of Related Problems on Migrant Workers underwriting Work-related Injury Insurance," a policy on labor and social security in 2004.

Second, the social insurance extended to cover residents, marked by the draft of social insurance law and relevant policies of the same period, has ruptured the original relationship of social insurance based on employment or labor. For example, chapter 2 (endowment insurance) of the draft of Social Insurance Law promulgated in December 2008, has covered all kinds of employees in urban areas. In addition to employees of public-owned enterprises and civil servants, the insurance has included non-daily paid employees and individual self-employed private owners. Article 18 states, "The State will gradually establish and improve basic endowment insurance for urban and rural residents." For example, in recent years, governments at various levels have promulgated regulations related to medical and endowment insurance among urban and rural residents.

II. Progress in Social Security in the Past Year

1. Extended Coverage of Social Insurance

There are two obvious signs measuring a country's social security level. First, how many populations it covers; second, how high its social security level is. Before the 1990s, employees working in public institutions in Chinese Mainland benefited most from the country's social security (endowment and medical treatment) system, of which some guarantees can rival the welfare of developed countries. However, the most disadvantages were small population covered by such a system. Therefore, over the 30 years, China's reform in social security system has always embraced the wide coverage as one of its main targets. Reviewing the relevant laws and systems in recent years, we can see the extended coverage of social security shown in the past year. Information released on April 23, 2010, at the quarterly press conference by the Ministry of Human Resources and Social Security shows by March 2010, the nation's insurances involving urban endowment, medical care, unemployment, work-related injury and maternity have covered 239.69 million, 404.67 million, 127.29 million, 148.58 million, 109.88 million urban residents, respectively. The above figures, compared with those in the previous year, are an increase of 4.19 million, of 3.2 million, of 140,000, a decrease of 380,000, and an increase of 1.12 million, respectively. It can be seen that except for a drop in the work-related injury insurance, there was an increase of population in the other four insurances.[1]

2. Particular Emphasis on Social Insurance for Migrant Workers

The past 30-odd years has seen tremendous contribution of migrant workers in the midst of China's rapid economic growth, if viewed from labor supply. The flow of labor from rural to urban areas in such a large scale and scope is rarely seen in history concerning each country's economic development. The Chinese government has formed a relatively mature

1. *China Labor*, May 2010, p. 5.

management mechanism after many years of exploration and practice in the orderly guidance of the flow of migrant labor. Public concerns go to most of migrant workers who work in non-regular departments, and their social security benefits are one of the main concerns. Since little can be borrowed from other countries in terms of the issues of migrant workers, the Chinese government has made efforts to conduct investigations and experiments on such issues. To resolve social security benefits for migrant workers, the Chinese government has set up offices specially for them in government departments, and made positive results in this regard. Although Chinese Labor Law stipulates that migrant workers and other employees are protected by the Law, the implementation of such law was not satisfactory. We need more specific policies to enforce the relevant legal principles. Currently, China has established a labor and social security system that basically protects migrant workers' interests and rights. More and more migrant workers have been included into such system.

According to the Ministry of Human Resources and Social Security, work has gone smoothly in terms of social insurance for migrant workers. By March 2010, the social insurance for migrant workers included basic endowment, basic medical care, unemployment and work-related injury, of which endowment and unemployment insurances have covered 27.41 million and 16.85 million people, an increase of 940,000 and 420,000, respectively.[1]

3. Breaking a Dual Economic Structure – A Rapid Advance in Rural Social Security System

For a long time, China's traditional dual economic structure has exerted a great influence in its social and economic system, including social security system. Although China's actual situation required a dual economic structure in its early stage and most of the developing countries needed such a structure, if viewed from social equity, this structure should come to an end when economy advances to a certain level. The issue has drawn concerns from academic circles and government departments in the Mainland of China. At the same time, the government has already begun to resolve such issue in its policies. In fact, some systems featuring dual economic structure have been broken. This incorporates rural population into social security system.

Over the past year, the most noticeable thing is the publication of the "State Council's Guiding Opinions on Trial Implementation of New-type Endowment Insurance in Rural Areas." [No. 32 issued by the State Council on September 1, 2009] This policy marks a historic leap forward in China's social security. It mainly reflects the Chinese government's determination to establish a social security system covering rural and urban residents. The fundamental principles of the system are to give basic insurances, cover a wide range of people, and become flexible and sustainable. Despite its fledgeling start at a low level, the system is a new one covering hundreds of millions of people. The policy of the system states

1. Source: 2010 first quarter press conference by the Ministry of Human Resources and Social Security.

that those above the age of 16 who did not join the urban basic endowment insurance can be insured at the place where they registered their households. Those above the age of 60 in rural areas can receive their monthly pension. The funding sources of the system come from payment paid by individuals, as well as collective and government subsidies.

By March 2010, the new-type endowment insurance in the countryside had covered 46.85 million people altogether, with 15.7 million receiving the insurance. The incomes from this new type of insurance amounted to 11.738 billion Yuan, and its expenses were 4.585 billion Yuan, resulting in a balance of 24.269 billion Yuan.[1] These enormous figures show the new-type endowment insurance in rural areas, although developing at an early start, was quite encouraging in terms of the number of people benefiting from such insurance.

III. Other Indications of Strengthened Social Security Rights

1. Further Improvement in Social Insurance Benefits

Considering a wide gap of retirement benefits between enterprises and government offices and public institutions, the Chinese government has raised the basic endowment benefits for retirees for six consecutive years in order to guarantee elderly lives of enterprise retirees. This measure, rarely seen in the reform of endowment insurance in Chinese Mainland, is another reflection of the concept of ruling the country – "putting people first." The livelihood this government pursues is to resolve the problem of food and clothing for the people and let them live a moderately well-off life on the one hand; and to lead a life in dignity on the other hand. Here, dignity means decent work[2] as well as an elderly life in dignity for retirees. Properly raising retirement treatment is an economic guarantee toward this goal. Although, improvement in retirement benefits needs the government's financial investment, due to the concept of ruling the country – enhancing people's livelihood, the government has input unprecedented investments. The basic endowment for enterprise retirees in 2010 has been raised by about 10 percent. Over 50 million retirees have got their added part of the basic endowment. After readjustment, the monthly basic endowment averages 1,300 Yuan.[3]

2. Establishing a Transfer System for Endowment Insurance

To resolve a long baffling problem – continuation of endowment insurance in a different place, on December 28, 2009, the General Office of China's State Council relayed the "Temporary Methods on Transfer and Continuation of Basic Endowment Insurance for Urban Employees by the Ministry of Human Resources and the Ministry of Finance." The policy is aimed at enabling employees in a mobile state to enjoy legitimate rights and benefits of endowment insurance. A substantial step has been taken to ensure the endowment insurance

1. See faxes from ministries and commissions, *China Labor*, May 2010, p. 5.

2. Decent work involves opportunities for work that international labor organization long advocated. The Chinese government has adopted and applied this idea into legislation and policy regulation.

3. Source: the 2010 first quarterly press conference by the Ministry of Human Resources and Social Security.

for rural migrant workers.

Three days after the promulgation of a policy announcing the continuation of endowment insurance in different places, the Ministry of Human Resources and Social Security and the Ministry of Finance jointly issued "the Opinions on the Work of Fees Settlement in Different Places Concerning Basic Medical Insurance." (Issue No. 190, 2009 by the Ministry of Human Resources and Social Security) These two policies enable retirees to enjoy a higher standard of social security. The policy of fees settlement for basic medical insurance in different places gives convenience to those who pay their medical fees in non-registered places. It results from the concept of putting people first and the establishment of collaborative mechanism between different areas. The new policy will help those under medical insurances in some other places save the expense that can be avoided in their registered places, and offer convenience in hospitalization and settle medical fees with their medical insurance card.

The continuation of endowment insurance and the fees-settlement of medical insurance in a different area will produce positive results. People under those insurances will not be restricted by their originally registered place of birth. They can freely choose where to transfer their insurances for post-retirement lives.

Since WWII, the right to social security has become a major category of human rights for each country. The right to social security was stipulated in Article 22 of the *Universal Declaration of Human Rights* (December 10, 1948) and Article 9 of *International Covenant on Economic, Social and Cultural Rights* (December 16, 1966). Since the approval of the *International Covenant on Economic Social and Cultural Rights* in 2001, China has fulfilled its obligations to the convention, including the implementation of right to social security. Meanwhile, the Chinese government has conducted a long-term research on the international labor covenant related to social security, and applied its research into legal practices. Over the 30 years of exploration, China has established a social safety net covering people working in either regular or non-regular employment departments, either urban or rural areas. In terms of the social security system involving the size of population and scale of funding, China, with its practice, has made its outstanding contribution to the world's social security programs.

Despite challenges ahead, China's reform of social security will continue to move forward. There are many problems awaiting further research and resolution. For example, when will we incorporate civil servants into social insurance system? Will occupational pension programs and citizens' unified pension system be suitable for China?

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On China's Protection of Citizens' Right to be Informed and Construction of Government Information Publicity System

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I. The Unfolding Situation of the Philosophy of Right to be Informed in China and Early Construction of Government Information Publicity System

The origin of the thought, known as China's protection of right to be informed and the construction of government information publicity system, at least can be traced to the first decade after reform and opening up. In the Thirteenth National Congress of CPC in December 1987, the political report proposed to hold special emphasis on "improving leading organs' openness and making major issues being known and discussed by the public." Therefore, the thought and policy basis of making government affairs public and establishing government information publicity system have been built. Under the promotion of the spirit of the Thirteenth National Congress of CPC, "two publicities and one supervision" (making working systems and working results public and accepting people's supervision) aiming to promote pure and upright ruling was carried out at the late stage of 1980s. It can be considered as China's first attempt of making government affairs and information public in the new era of reform and opening up.

In the Fifteenth National Congress of CPC in 1997, making government affairs public has been stated as the basic policy of the ruling party. For instance, extending democracy at the grassroots level, improving democratic election system as well as making government and financial affairs public are mentioned in the first section of improving democracy, attached to the part of political restructuring and democracy and legal system of political report of this Congress. In the fourth section of improving democratic supervision, deepening reform, perfecting legal supervision and establishing restriction mechanism for legitimate exercise of power are proposed. We should hold the principle of fairness, justice and openness and departments directly involving people's immediate interest should conduct an open administrative system. In 1998, the Supreme People's Procuratorate was the first department to make prosecution services public. From then on, important judicial and administrative enforcement departments, such as courts, public security offices and customs started to make trial, police and customs affairs public, etc.

In the Seventeenth National Congress of CPC in 2007, right to be informed, together

with right to participate, right to be heard and right to oversee, was written into the political report of this Congress[1]. In the spring of 2009, they were written into China's first *National Human Rights Action Plan (2009-2010)*[2]. We can say that so as to insist on making government affairs and information public, CPC and the central government organs have realized that "no changes will occur because of changes of leaders, their opinions and attentions."

Therefore, it is necessary to mention the "Government Online Project" launched by 48 ministries and commissions of the central government, including the Standing Committee of NPC, the General Office of CPPCC, the General Office of the Supreme People's Court and the General Office of the Supreme People's Procuratorate at the beginning of 1999.[3] This facilitated one of the ruling party's important ruling ideas and policies, making government affairs public to be concretized into the construction of government information publicity system. At early stage, "Government Online Project" was oriented as "the measure for solving the domestic network problem of 'more channels but less information' and revitalizing China's emerging electronic information industry" by the launching authorities.[4] However, the law circles took it as that "it is a task for CPC, the ruling party and people's governments to meet citizens' and social needs of ever-growing information; it is information publicity measure for protecting right to be informed and now it is at the stage of policy; in accordance with the new constitutional norm of governing the country according to law, it should be taken into the system of constitutional governance and legalization[5]." It resulted in a relatively deep special research from law circles and academic community on the protection of right to be informed and the construction of government information publicity system. From then on, through some domestic and international events, such as "China's accession to WTO," "fight against SARS," "enacting Administrative Permission Law," "fight against bird flu," "disclosure of some foreign media's distorted reports on Xinjiang and Tibetan

1. The sixth part of persistently developing socialist democratic politics in the report of the Seventeenth National Congress of CPC stated "to improve the democracy system, to enrich forms of democracy, to increase channels for democracy, to implement democratic election, decision-making, management and supervision as well as to protect right to know, right of participation, right of expression and right of supervision."

2. See China's first *National Human Rights Action Plan (2009-2010)* released by Information Office of the State Council on April, 2009, Section 2: Guarantee of Civil and Political Rights (5) Right to be informed.

3. On January 22, 1999, the initiation meeting of Government Online Project, held by China Telecom and National Information Center of Economic and Trade Commission, with the support of 48 organs and departments, was unveiled. Later, NPC, the General Office of the State Council, the General Office of CPPCC, the Supreme People's Court and the Supreme People's Procuratorate and other state organs joined the team. As to this, this Project involves not only administrative organs under the State Council and all state administrative organs, including the highest organ of state power, CPPCC and judicial organs.

4. See the news release in the initiation meeting of 1999 Government Online Project.

5. See Zhao Zhengqun's *The Legal Analysis of Government Online Project*, Volume 10, 2000 of *Law Science*; *The International Trend of Information Publicity Legalization and Significance of Government Online Project*, Volume 4, 2000 of *Quarterly Academic Journal*; *The Concept of Right to Know and Its Initial Practice in China*, Volume 3, 2001 of *China Legal Science*, etc.

separatists' sabotage," "5.12 Sichuan earthquake relief" and so on, academic community and all social circles kept a growing focus on the right to be informed and construction of government information publicity system. In such a background and with corresponding academic support; on the basis of making laws, regulations and provision of local government information publicity, after 5 years' efforts, in April 2007, the State Council published "*Regulations of the People's Republic of China on the Disclosure of Government Information*" (hereinafter called *Regulations*), which took effect on May 1, 2008.[1]

The *Regulations* has 5 chapters, composed of 38 articles. It includes rich contents, such as general provision, the scope of openness, approaches and procedures of openness, supervision and guarantee, information processing and acquisition by organizations of public administration authorized by laws or regulations, public enterprises and institutions involving people's immediate interest, including education, health and medical, family planning, water, power, gas and heating supply, environment protection, public transport departments, etc. The formulation and conduction of *Regulations* is an important result of reform and opening up and construction socialist country under the rule of law. It shows that China is under the sound and rapid development in the field of protection of right to be informed and construction of government information publicity system. Meanwhile, close-related information legal issues have become major issues affecting China's human rights, social development and legal construction.

II. The Implementation Status of China's Government Information Publicity System

As the formulating organ of the *Regulations*, the State Council has placed high value on the implementation of the *Regulations*. In August of 2007, the General Office of the State Council issued *Notice on Doing a Good Job in the Preparatory Work for the Implementation of the Regulations of the People's Republic of China on the Disclosure of Government Information*, with No. 36 [2007] of the General Office of the State Council. Then in April of 2008, *Opinions on Some Issues about Implementing the Regulations of the People's Republic of China on the Disclosure of Government Information*[2] with No. 54 [2008] of the General Office of the State Council was released. These two pieces of regulatory documents listed detailed requirements for the conduction of *Regulations* by organs and departments at all levels. No. 36 [2007] Document proposed seven requirements: fully realizing the significance and urgency of the implementation of the *Regulations*; losing no

1. This is retrieved from Zhao Zhengqun's paper in Volume 2, 2010 of Nankai Journal: the starting words for the special research of "The Conduction of *Regulations on the Disclosure of Government Information* and China's Information and Legal Development."

2. Documents marked with No. 36 [2007] of the General Office of the State Council and No. 54 [2008] of the General Office can be seen on the government information publicity pages of the central government's website www.gov.cn.

time formulating or amending the government information disclosure guide or catalogue; establishing government information publicity actuating mechanism and institutional norm as soon as possible; fulfilling and formulating relevant supporting measures at a serious manner; effectively unfolding the education and training for staff of administrative organs; fully tapping the platform potential of government information disclosure by government websites; and strengthening the leadership in the government information publicity system. And No. 54 [2008] Document proposed seven requirements for government information publicity management institution; establishing government information publicity coordination mechanism; crypto-censorship on government information; offering to make government information public; making government information public upon application; and making information of public enterprises and institutions public.

Because of limitation of words, this paper only takes the government information publicity annual reports of 2008 and 2009 released by various departments, which are subject to *Regulations* as the basis data. Meanwhile, depending on research data of corresponding social organizations,[1] this paper holds a special study on the implementation of information publicity by provincial organs and ministries, which is to present basic situation of the implementation.[2] Through visiting websites of central and local governments as well as related organs, the author gets a table for the government information publicity situation and contents of 27 ministries and commissions under the State Council, provinces, autonomous regions and municipalities in 2008 and 2009. The following table is "Table of Comparison and Analysis of Government Information Publicity Situation and Contents of Annual Reports Released by Ministries and Commissions under the State Council and Provinces, Autonomous Regions and Municipalities 2008-2009."

Through the above table, we can know that the *Regulations* with an aim at protecting right to be informed has been basically implemented in Chinese mainland; the right to be informed of citizens has been well protected than before; and the overall situation of 2009 is better than that of 2008. For instance, as to the contents of these reports, reports containing "applying for making government information public and refusing to make government information public" released by ministries and commissions under the State Council, provinces, autonomous regions and municipalities respectively increased from 23 to 24, and 27 to 30; reports containing "government information publicity on charging, reduction and remitting" released by ministries and commissions under the State Council, provinces,

1. These materials include collected and systemized materials by Information Law and Human Rights Research Center of Law School of Nankai University, Public Participation and Studies Center of Peking University and Website "Transparent China" of Renmin University of China.

2. In accordance with the six items for contents requirement stipulated in the *Regulations*, the above data of 2008 and 2009 can show the basic situation of government information publicity of various organs.

Years & Release Organs / Release Date & Contents	2008		2009	
	Ministries and commissions under the State Council (%)	Provinces, autonomous regions and municipalities (%)	Ministries and commissions under the State Council (%)	Provinces, autonomous regions and municipalities (%)
Number of departments (local governments)	27	31	27	31
Number of departments with annual reports searched	25 (93%)	31 (100%)	25 (93%)	31 (100%)
Number of annual reports released before March 31	18 (72%)	22 (71%)	23 (92%)	30 (97%)
Number of annual reports "offering government information"	25 (100%)	28 (90%)	25 (100%)	30 (97%)
Number of annual reports "making government information public upon application"	23 (92%)	27 (87%)	24 (96%)	30 (97%)
Number of annual reports containing "government information publicity on charging, reduction and remitting"	21 (84%)	22 (71%)	22 (88%)	28 (90%)
Number of annual reports containing "applying for administrative review, filing administrative proceedings caused by government information publicity"	22 (88%)	25 (81%)	24 (96%)	29 (94%)
Number of annual reports containing "main problems and improvement of government information publicity"	21 (84%)	27 (87%)	22 (88%)	25 (81%)
Number of annual reports containing "other necessary reporting issues"	2 (8%)	3 (10%)	1 (4%)	1 (3%)
Average word count of annual reports	2,965	4,721	2,921	5,522

autonomous regions and municipalities respectively increased from 21 to 22, and 22 to 28; reports containing "applying for administrative review, filing administrative proceedings caused by government information publicity" released by ministries and commissions under the State Council, provinces, autonomous regions and municipalities respectively increased from 22 to 24, and 25 to 29; reports containing "main problems and improvement of government information publicity" released by ministries and commissions under the State Council increased from 21 to 22; reports containing "offering government information" increased from 28 to 30 and the average word count of annual reports increased from 4,721 to 5,522. As to the promptness, the reports released before March 31 of every year, stipulated in the *Regulations* respectively increased from 18 to 23 for ministries and commissions under the State Council and 22 to 30 for provinces, autonomous regions and municipalities. To some extent, the detailed contents of annual reports demonstrated the improvement of their contents and effectiveness; the improvement of promptness demonstrated the improvement of norm level and promptness.

However, some dissatisfactory points are found. For example, Article 31 of *Regulations* demands that "administrative organs and departments at all levels shall release their government information publicity annual reports;" nevertheless, Ministry of National Defense and Ministry of State Security, the two important state organs have no interpretation and explanation for failing to release. Article 32 of *Regulations* stipulates that annual reports released by various organs and departments shall contain six items: "(1) the situation of administrative organs offer to make government information public; (2) the situation of administrative organs making government information public upon application and refusing to make government information public; (3) government information publicity on charging, reduction and remitting; (4) the situation of applying for administrative review, filing administrative proceedings caused by government information publicity; (5) main problems and improvement of government information publicity; (6) other necessary issues to report." However, only two reports of People's Bank of China contain the above six items. Ministry of Housing and Urban-rural Development adopts "Other" as the title of (6) in 2008's report; other departments of the State Council lack "other necessary issues to report." In addition, there are many reports lacking of the most important item, "main problems and improvement of government information publicity." Or they contain such titles without detailed information.[1]

1. Taking annual reports of ministries and commissions under the State Council as example, reports of Ministry of Science and Technology and Ministry of Supervision contained nothing about "main problems and improvement of government information publicity;" in the other 25 reports containing such contents stated as that "in accordance with the current situation, working modes and patterns should be improved" (Development and Reform Commission), "there is some distance from people's demand" (Ministry of Industry and Information Technology), "there is some distance from people's demand on information publicity and the convenience for people should be improved" (Ministry of

III. The Development Prospect and Approaches of China's Government Information Publicity System

The international trend of protecting right to be informed and the construction of government information publicity system, gradually formed since the second half of the 20th century, has promoted all circles of China to form broad consensus that it would definitely become a basic human right and national constitutional system as well as its bright prospect can be easily predicted. However, we cannot be just satisfied with the current protection level that is created by the *Regulations*, which is one of administrative regulations; it should be upgraded to be a formal national law, even written into the *Constitution*; its legal guarantee should be strengthened. Therefore, the author has proposed in his relevant papers that in order to tap the potential of "support and promotion of China's political system reform and constitutional construction by government information publicity lawsuits with important constitutional guarantee meaning," "it is suggested that law of national information publicity should be formulated as soon as possible to provide formal and complete legal base; we should improve the administrative implementation mechanism of government information publicity, provide sounder enforcement environment for information publicity lawsuits; in the lawsuit practice, we should pay attention to using cases to direct information publicity lawsuits and concluding substantial relevant lawsuit rules; meanwhile, the transparency of information publicity lawsuits should be improved; all of which can facilitate the development of government information publicity that shows the contemporary development trend of law civilization.[1] In this paper, the author proposes following suggestions for "government information publicity reporting system," an important link of "improving the administrative implementation mechanism of government information publicity."

Firstly, it is suggested that "report publication" should be comprehensively carried out. In accordance with the *Regulations*, the public reporting system of making government information public is a general rule. Thus, the conduction of this system should not be limited to ministries and commissions of central government, administrative organs of provinces and provincially administered municipalities; it should be expanded to county governments and functional departments, especially governments at township level.[2] Meanwhile, it should be expanded to functional departments that administer public affairs and public

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Communications and Transportation); they are abstract.

1. See *Analysis of the First Batch of Information Publicity Lawsuits in Mainland China (2002-2008)* written by Zhao Zhengqun and Dong Yan, which is published in "Theoretical Talking" of Volume 6, 2009 of *Law and Social Development*.

2. This suggestion can be traced to town government information publicity of Article 12 of the *Regulations* and the warning of the growing lawsuits of farmers asking making financial affairs of helping the poor and public relief. This can be seen in *Analysis of the First Batch of Information Publicity Lawsuits in Chinese mainland (2002-2008)* written by Zhao Zhengqun and Dong Yan, which is published in Volume 6, 2009 of *Law and Social Development*.

enterprises and institutions involving people's immediate interest. According to *Opinions on Some Issues about Implementing the Regulation of the People's Republic of China on the Disclosure of Government Information* released by the General Office of the State Council, some principles have been proposed for the information publicity of public enterprises and institutions; on this basis, detailed regulations for relevant public enterprises and institutions should be published as soon as possible.

Secondly, functional departments in charge of government information publicity are required to conduct guideline and supervision for publishing annual reports. *Notice on Doing a Good Job in the Preparatory Work for the Implementation of the Regulations of the People's Republic of China on the Disclosure of Government Information* released by the General Office of the State Council has listed that "the documenting of government information publicity guide and publicity catalogue has to be finished by the end of March, 2008." This requirement was for the people's governments of all provinces, autonomous regions and municipalities directly under the Central Government; all the ministries and commissions of the State Council and all the institutions directly under the State Council. However, it neglected the standardization of contents and formats of the information publicity reports of various departments; department of the State Council in charge of information publicity should provide necessary guideline of writing government information publicity reports for administrative organs of various levels, especially giving a special administrative document of "government information publicity guide." The neglect resulted in many dissatisfactory situations in the process. Therefore, it is suggested that relatively detailed "reporting guide" should be made and uniformed "report model" should be provided to help departments to write annual information publicity report. Under the provision of providing scientific guidance for releasing annual reports, various higher administrative authorities, especially departments in charge of government information publicity under the State Council stipulated in the *Regulations*, should seriously implement the supervision mechanism of "fulfilling the duty of reporting," including punishing departments with misconduct or negligence in the process. Only by doing this can China's government information publicity reporting system be implemented and have further development.

Finally, social comments on "report publication" should be carried out and public participation in the publication of government information publicity report should be expanded. China's support for public participation in important national legal construction in the form of statute can be traced to the *Administrative Procedure Law* formulated in 1989. The second paragraph of Article 29 states that "A lawyer, a public organization, a close relative of the citizen bringing the suit, or a person recommended by the unit to which the citizen bringing the suit belongs or any other citizen approved by the people's court may be entrusted as an agent ad litem," which demonstrates China's legislatures' legal

support for public organizations or social commonweal organizations' participation in legal practice of administrative proceedings. However, over almost 20 years, no evident progress has been achieved in this field. On the contrary, with reform and opening up as well as the development of institutional reform, new progress has been achieved in the field of the public participation in lawmaking of statute. Taking for example of the legal construction of government information publicity, we know that news media, citizens and many experts have an active share in the lawmaking of *Regulations*. Currently, the biggest problem is that no "organized participation," "systemized supervision" and "comprehensive and professional comments" of commonweal organizations' participation in Chinese mainland are formed and it is a long way to go. However, contemporary public governance experience has proved that without the participation of the public, relative good results of utilities, public governance, including legal construction, cannot be got. Therefore, this paper places a special stress on carrying out of social comments of "report publication" and expanding the public (commonweal organizations as the representative) participation in the publication of government information; and takes it as one of the important approaches for developing and improving the protection of right to be informed and construction of government information publicity system.

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Inmates' Rights Protection in China's Prisons

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I. Introduction to Chinese Prison System

Prisons are the State's organ for executing criminal punishment. Chinese laws require that criminals condemned to a fixed term sentence, life sentence, or to death penalty with a two-year reprieve should serve their terms in prisons. China's highest judicial administrative organ is the Ministry of Justice whose Bureau of Prison Administration, manages the country's prisons. According to the levels of prison administration, prisons are divided into three categories. Currently there is the only one prison in category I, directly under the Ministry of Justice. Provincial prisons, namely under the charge of prison administrative organs of provinces (autonomous regions or municipalities), belong to category II. The majority of Chinese prisons fall in this category. The last category is made up of prisons at regional or city level, which in light of gender and age of inmates are also divided into three types: prisons for men above 18, for women above 18 and juvenile delinquent reformatory.

II. Basic Rights Enjoyed by Chinese Inmates

The issue of basic rights for inmates is an important component of the overall human rights. On March 14, 2004, China's Second Session of the Tenth National People's Congress passed the amendment to the basic law – Constitution of the People's Republic of China, into which "the State respects and protects human rights" is included. Since the issue of the first white paper on human rights in 1991, China has successively published a series of white papers showing its protection and improvement of concerning human rights. These white papers also cover the rights protection for inmates, a special group in society. In 1992, the Chinese government promulgated the white paper *Criminal Reform in China*, introducing with facts the country's basic principles and achievements in reforming criminals, as well as the rights enjoyed by criminals during their incarceration. *China's Prison Law* promulgated in 1994 prescribes the rights for inmates, involving their personal civil and political rights, as well as their communications with the outside. According to law, China's prison administrative organs have also put forth a series of related measures to protect inmates' rights. Currently, China has joined international human rights conventions that require signatory nations to fulfill relevant obligations that include the rights protection for inmates.

China submits regular reports to monitoring committees of international conventions, on the protection of human rights, which contain the rights protection for inmates.

China's Prison Law dictates in its general prisons as the guideline in prescribing inmates' rights that human dignity of a prisoner shall not be degraded, and his/her personal safety, lawful properties, and rights to defense, petition, complaint and accusation as well as other rights which have not been deprived of or restricted according to law shall not be violated. Meanwhile, the law's other chapters specify the details for such basic rights. The main rights for prisoners prescribed in China's Constitution, other laws, regulations and rules include the right to vote, seek state compensation, defense, rest, petition, complaint, accusation, and to obtain wages, as well as their personal safety, human dignity, lawful properties, labor protection, education, freedom of religious beliefs, communications, marriage and family, and entertainment.

Moreover, inmates also have some special rights. The laws also define that under the incarceration, inmates have some rights different from ordinary people. In accordance with legal requirements and procedures, inmates are entitled to these special rights: parole after commutation, the right to interview, obtain rewards, leave the prison to visit their family, be released upon completion of their term, and to reclaim their household registration after release.

In addition, some inmates, like minors, women, the senior, the sick and disabled, those of ethnic minority origins and foreigners are also given special treatments in life, management and labor that differ from ordinary inmates, when factors such as their physical and psychological condition, physical strength and living habits are taken into account.

III. Rights Protection for Inmates in Chinese Prisons

China's prisons implement the principle of combining punishment with reform in order to transform inmates into law-abiding citizens. The system for protecting inmates' basic rights with Chinese characteristics is reflected in the following aspects.

(1) Legal Guarantee

The *Prison Law of the People's Republic of China* approved in 1994 is the country's first legal code concerning prison administration since 1949. The significant *Prison Law* legalized the successful experience in China's prison work. One of the most obvious features is the stipulation of legal rights for inmates in order to prevent violations from the police. Article 14 states: The people's police of a prison shall not commit any of the following acts: (1) to demand, accept or seize money or goods from prisoners or their relatives; (2) to release a prisoner without authorization or through dereliction of duty to cause a prisoner to flee from the prison; (3) to use torture to coerce a confession, or to use corporal punishment, or to maltreat a prisoner; (4) to humiliate the human dignity of a prisoner; (5) to beat or connive

at others to beat a prisoner; (6) to utilize a prisoner to provide labor services for personal gains; (7) to privately deliver a letter or an article for a prisoner in violation of regulations; (8) to illegally surrender the functions and powers to supervise and control prisoners to another person; or (9) other law-breaking acts. If the people's police of a prison commit any act specified in the preceding paragraph and the case constitutes a crime, the offenders shall be investigated for criminal responsibility; if the case does not constitute a crime, the offenders shall be given administrative sanctions. Moreover, *China's Constitution*, *Criminal Law*, *Criminal Procedure Law*, *People's Police Law*, and *Law on State Compensation* have specified rights for inmates from different perspectives. Other relevant administrative regulations and rules further constitute the legal basis for the protection of inmates' rights.

(2) Supervisory Guarantee

China's supervision over the people's police's implementation of law is a legal system and has clear legal basis.

According to the Constitution and other relevant laws, the supervisory system is divided into external and internal supervision.

External supervision, the major form, includes the following: supervision conducted by legitimate state organs, namely by people's congresses, by people's procuratorates and by society as well. Article 6 of *Prison Law* states: A people's procuratorate shall exercise supervision in accordance with the law over the legality of activities conducted by prisons in execution of criminal punishments, while Article 224 of *Criminal Procedure Law* states: The People's Procuratorates shall supervise the execution of criminal punishment by executing organs to see if the execution conforms to law. If they discover any illegalities, they shall notify the executing organs to correct them. The supervision over the law enforcement of the people's police is one of the people's procuratorates' duties. In relevant rules, the people's procuratorate that supervises a prison will designate a certain number of cadres to a prison's supervisory department or section to perform this duty. In addition to prisons' supervisory departments established by the people's procuratorates at various levels, the Chinese government has assigned personnel to be stationed at prisons, supervising the execution of criminal punishment, dealing with the prisoners' complaints, accusations and petitions, and overseeing the performance of a prison's administrative staff and investigating their acts if found illegitimate. In addition, internal supervision is also carried out among prisons, public security departments, the people's courts and other related organs. Supervision by society mainly excludes state organs and includes political organizations, social groups, other organizations and individual citizens. Many prisons select supervisors from society other than state organs to oversee law enforcement. Such supervision over law enforcement is an indispensable step in protecting inmates' rights.

Internal supervision includes the following: supervision carried out by disciplinary

departments, usually by Chinese Communist Party's disciplinary offices and the administrative offices of the State supervision organs; mutual supervision between the superior and the subordinate.

(3) Practice Guarantee

On the level of practice, prisons have initiated to open special schools in early 1980s. This idea and practice of stressing reform through education in prison was unique in the international field of reforming prisoners. Since 1994, China's Ministry of Justice put forward the idea of creating a civilized prison, modern in management and equipment, which brought improvement in prisons' comprehensive capabilities and further laid a solid foundation for guaranteeing inmates' rights. To ensure the impartiality of law enforcement, the people's police working in prisons received a three-year educational program starting from 1999. To put the law enforcement in prisons under wide supervision and to protect inmates' legitimate rights, a "sunlight program" was launched to promote the transparency of prison work. In July 1999, the Ministry of Justice issued the Rule of Two Transparency and One Supervision during the Execution of Criminal Punishment in Prisons (trial). The "Two Transparency" refers to the release of the guidance and procedure concerning law enforcement and of its results while strictly obeying relevant laws, regulations and rules. The "One Supervision" indicates a ready acceptance of wide supervision from related departments and those from other circles. On October 12, 2001, the Ministry of Justice promulgated the Implementation Opinions on Promoting Transparency of Prison Work in the Prison System. [No. 105, issued by the Ministry of Justice in 2001] Later on, work to promote such transparency started to spread among prisons all over the country.

Reform of prison system has laid a good foundation for further protection of inmates' rights. Due to historical reasons, China's prisons used to run for a long time by combining the prison, enterprise and society. The prison lived on its enterprise to make up for its shortage of fund, which gave priority to the prison's business activities, but weakened its function of executing criminal punishment, and of reforming criminals through education. This might easily cause prisoners to work overtime, to overstrain, and to overwork. To resolve these problems and improve work conditions in prison, China has begun its prison reform on a trial basis since January 2003, targeted at establishing an operation system of "providing full funding, separating prisons from enterprises, splitting income and expenditure, regulating operation." One of the key factors in the reform is that the State provides full funding to run prisons. After the trial, such prison reform has prevailed in the mainland since 2008, which will lay a solid foundation for the protection of inmates' rights.

(4) Material and Social Guarantees

Article 8 of the Prison Law states: The State shall ensure the expenditures of a prison for the reform of prisoners. The prisons' expenditures for the people's police, for the reform

of prisoners, for the living expenses of prisoners, for the administration and installations of the prison, and other special expenses shall be included into the State budget. The State shall provide production facilities and production expenses necessary for prisoners to do labor.

China has offered material guarantee to protect inmates' rights. Though underdeveloped at the socialist primary stage, China has been improving the living condition for inmates as possible as it can. Their food, clothing, accommodation and daily necessities are guaranteed by the State, with the expenses covered by fiscal funding. As for the diet, inmates will be given adequate, cooked, lukewarm and hygienic food. Each prison has specially set up medical agencies, enabling inmates to get a timely, effective medical treatment. Prisons are also equipped with necessary heating and cooling facilities.

With strengthened social security system, the Communist Party of China and the Chinese government attached great importance to the social security of persons released after serving their prison terms, including the protection of legitimate rights, as well as the provision of material support, employment, relocation, and guidance in life, etc. These measures enable those released from prison to enjoy their rights fully, and to become law-abiding citizens.

IV. Development and Improvement of Chinese Inmates' Rights Protection

Though Chinese prisons have experienced tremendous development in terms of inmates' rights protection, Chinese legal system, law enforcement, present prison, management system and awareness of human rights in law enforcement staff remain to be improved as China is at socialist primary stage developing its economy. Much needs to be done to better protect inmates' rights from either legal or operational perspective.

(1) Prisons' Legal System to be Improvement

Currently, there is a long way to go in improving Chinese prisons' legal system. Firstly, the *Prison Law* itself needs improvement. For example, Article 8 prescribes: The State shall ensure the expenditures of a prison for the reform of prisoners. It does not state clearly who will be held accountable in case of failure in implementing in this article. Another example is about "prisoners who no longer endanger public society after parole." The standard is so vague that deter reasonable giving of paroles, setting obstacles in law enforcement. Disadvantages in prisons' legal system hinder the protection of inmates' legitimate rights and tarnish the sanctity of law. Secondly, revision of major laws such as the *Criminal Procedure Law* and *Criminal Law* has come up with some articles that contradict the *Prison Law*. Thirdly, there is a lack of supporting measures to go with laws, regulations, and rules issued in ministries. By now, regulations and specifications for the implementation of the *Prison Law* have not come out, affecting the operation of the Law. Moreover, supervisory mechanism of prisons needs strengthening and improving.

(2) People's Police to Reach Boosted Awareness of Inmates' Human Rights

China has regularly provided a variety of educational and trainings to prison police and made notable achievements in this regard. As is mentioned above, a three-year educational program was launched in 1999 to increase work standard of the people's police in prison. But it is known that some police officers have weak sense of law and act indifference to human rights for inmates, which mainly results from the following four aspects. First, Chinese social and culture traditions have affected people's thoughts and values. The enduring feudal influence has imbued China with a relationship society where human feelings weigh greater than law. The rule of law faces historical and cultural obstacles, and to some extent, so does the protection of inmates' rights. Second, the weak awareness of democratic supervision creates a closed environment for law enforcement in prison. Third, leftist idea and emphasis on the repressive function of prisons has long suppressed the awareness of the protection of inmates' rights. Fourth, the studying of international human rights conventions and other international documents on prisoners' treatment is inadequate. Thus, education to promote human rights awareness is necessary and should be further intensified.

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Human Rights Protection within the Fields of Family Planning

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I. Background

Right to development is the right entitled to individuals, as well as to a particular state or nation. This essay mainly aims to explore the right to development in the fields of family planning and reproductive health of population from an individual's point of view, wherein the right to development is the right characterized by active, free and meaningful self-motivated participation of individuals in political, economic, social and cultural development and individuals have access to the right to enjoy the benefits brought by development.

The concept of reproductive health that is universally accepted by international society was confirmed in the International Conference on Population and Development in Cairo in 1994, in which emphasis was laid on the fact that people have the capability to reproduce and the freedom to decide if, when and how often to do so; women are able to go through pregnancy and childbirth safely; babies and kids are able to survive and grow up healthily; people are able to have a responsible, satisfying and safe sex life. This concept has prompted the transition made from controlling population to accomplishing reproductive health. Improving reproductive health has become an important reflection of human rights being achieved. Hence, essentially, rights of family planning and reproductive health are an essential component of right to development.

In an effort to boost the level of reproductive health of the Chinese population and protect the right of reproductive health – which is a right to development, National Population and Family Planning Commission launched the trial of quality family planning and reproductive health services in 1995, making sure that people are well informed and free to choose, emphasizing the "people-oriented" principle in the process of population control, safeguarding the basic rights of the public and meeting the basic needs of the general population. *The Population and Family Planning Act* implemented in 2002 stressed "promoting family planning and safeguarding the legitimate rights of citizens" so as to make guaranteeing the legal rights and benefits of the public be confirmed in law.

In 2004, respect for and protection of human rights was enshrined in Constitution and was successively incorporated into the development scheme of the "Eleventh Five-Year Plan" and the Party Constitution of the Communist Party of China. The first *National Human*

Rights Action Plan of China promulgated in 2009, provided guarantee for protection of human rights in the fields of population and family planning.

II. Major Achievements

China is actively promoting exchanges and cooperation of human rights in the areas of population and family planning, successively participating in Sino-Sweden, Sino-Norway, Sino-Australia human rights training and exchanges program. China attaches great importance to safeguarding human rights, reproductive health right in the implementation of international cooperation projects and daily routines involved in the endeavors of population and family planning.

In 2005, National Population and Family Planning Commission forged cooperation with Australian Human Rights Commission in launching a project of "Protecting the Right of Reproductive Health of Women in Central and Western China" in six provinces of western China. In the project, training, advertising and education, as well as other related activities were introduced to promote the development of human rights in population and family planning fields. National Population and Family Planning Commission carried out a survey on the protection of right of those service receivers in the process of acquiring reproductive health services in six townships covered by Sino-Australia Human Rights Protection Cooperation Project in December 2009. The focus was primarily on exploring the progress in the right to be informed, right of free choice, right of confidentiality, right of privacy, right of safety and right of comfort. This survey showed that population and family planning department had made tremendous achievements in safeguarding the reproductive health right of the general public.

1. Constant Improvement of Right to Be Informed

Right to be informed, provided all conditions are met, can guarantee the public to be informed of relevant national policies, understand relevant regulations and procedures regarding reproductive health services so as to have the guarantee of their reproductive health come true. We chose four criteria in the understanding of the public's right to be informed. The first refers to the right to know the relevant reproductive policies, mainly the regulations of birth intervals (in consideration of the recent revisions of regulations in each respective region, this criterion is used to replace the criterion of right to know reproductive policies); the second refers to the right to be informed of relevant rewards and support policies; the third refers to whether the service personnel can provide adequate information to help the public to understand the service process flow; the fourth refers to the public's right to be informed of the contraceptive methods used.

The general public knows more and better about policies related to their fundamental rights and interests. 90% of the public understands the knowledge of rewards and support

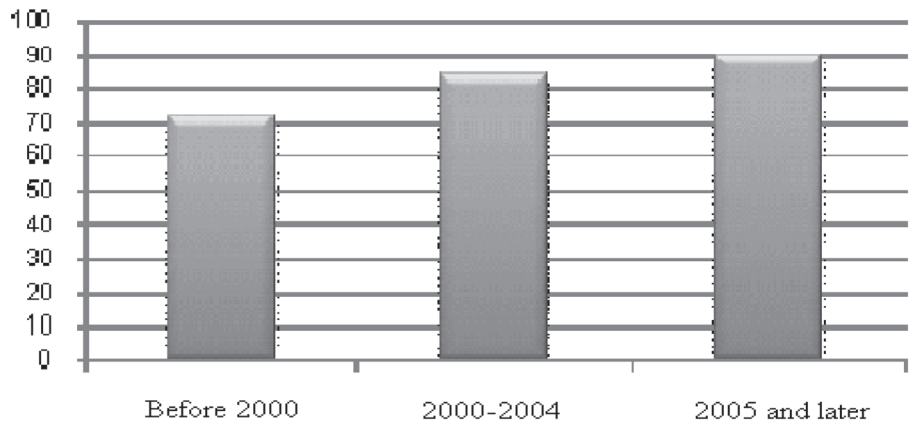

Fig. 1: The Proportion of Service Staffs Introducing Other Methods in Different Years

policies and over 75% knows about cancellation of birth intervals. More and more people get the knowledge of contraceptive methods.

In 2005, 90.1% of the service personnel offered more choices to service receivers who tried to find a proper way of contraception, rising from the figure 72.4% in 2000. It indicated that the project had tremendously improved the professionalism and attitudes of the service personnel. They offered to introduce contraceptive methods to increase the public's awareness and related capability.

Based on service receivers' increased knowledge of the side effects of contraceptive methods, their understanding of contraceptive methods has been improving. After 2005, 74.5% of those service receivers who had adopted contraceptive measures understood the side effects, 5% more than the figure before 2004.

2. Choice Scope Expanded and Right to Choose Enhanced

The number of contraceptive and birth control methods provided by each region has increased, which is the basis and prerequisite for the public to have adequate number of choices. More and more people would choose contraceptive and birth control measures by themselves than be passively helped by family planning staff. Only 5% of the interviewees who adopted contraceptive and birth control measures after 2005 had their methods of contraception chosen by family planning staff while the figure was 10.5% before 2000.

With autonomous choices on the rise, the structure of contraception has also undergone tremendous changes. Sterilization rate decreased from 56% before the year 2000 to 32.6% between 2000 and 2004, and to 22.8% after 2005. The application of intrauterine devices, condoms and other contraceptive methods shows a tendency of rising. (See Fig. 2)

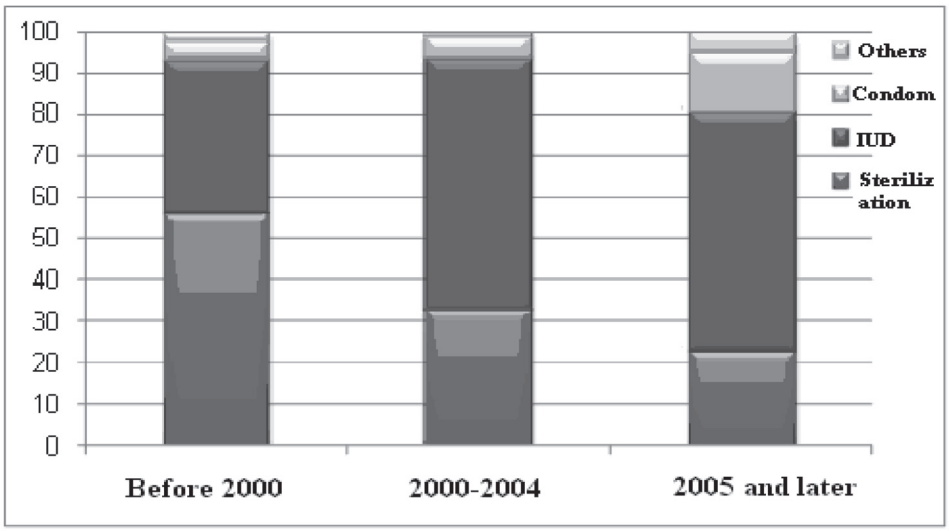

Fig. 2: The Overall Statistics of Contraception and Birth Control of the Interviewees in Different Years

3. The Right of Privacy of Service Receivers is Protected; Service Personnel's Awareness and Behaviors of Confidentiality are Constantly Increased

Services and management processes were reviewed to evaluate the rights of privacy and confidentiality. The criteria selected to evaluate the process of service fall into the protection of hearing and visual privacy, including: whether service receivers could enjoy absolute privacy when they ask for advices or have gynecological or ultrasound examinations; whether relevant discussions about services for other receivers are carried out before a third-party

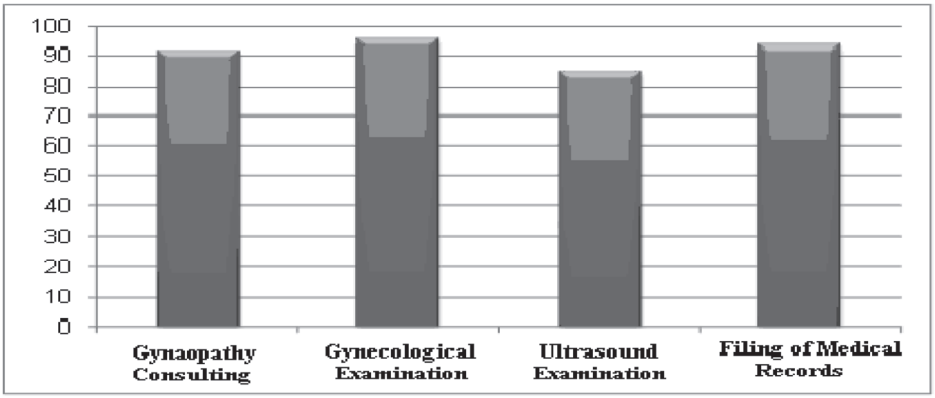

Fig. 3 The Situation of Privacy Protection under Different Circumstances

service receiver, whether their medical files are kept properly. The criterion for management process is to check whether personal information is exposed along with village affairs.

92% of service receivers could consult related gynecological issues, with absence of irrelevant staff. 96.1% of women at child-bearing age can receive independent gynecological examination. 84.6% of women at child-bearing age could have ultrasound examination alone. The majority of files are strictly managed (placed in the exclusive cabinets, locked in specific drawers). The majority of service receivers are unable to get service information of other receivers (The chance of service receivers' medical records being exposed is 6.1 %).

Publicizing individual contraceptive and birth control measures was an important part of birth control management in various places. But at present, the rate of publicizing individual contraceptive and birth control measures is merely 10.5%, indicating that the awareness of protecting privacy of women has been dramatically enhanced.

4. The Safety and Comfort Rights of Service Receivers have been Greatly Improved

The safety right of service receivers in the process of acquiring contraceptive services has been guaranteed. In recent years, the number of ways of contraception has been increasing, making other alternative methods more accessible to the public; effective follow-up visits has increased the safety of contraceptive measures. More than half of service receivers are able to receive follow-up visits within a month; the proportion of follow-up visits increased from 81.5% before 2000 to 90.4% after 2005 (see Table 1); among those who have chosen contraceptive methods, 96% of those with side effects of contraception lasted for more than half a year changed their methods of contraception timely; the proportion of women undergoing through the abortion after being pregnant for more than 3 months is lowered by 50% compared to that before 2005.

Special emphasis has been laid on the protection of the comfort right. In recent years, family planning departments have increased investment in improving the housing conditions of service stations, phasing in new equipment. 92% of interviewees are convinced that the service environment has improved a great deal in the past two years.

5. Service Receivers Generally to be Treated with Respect

Service receivers could generally be treated with respect while acquiring services. More than 90% of interviewees expressed that the service staff asked for their personal opinions before providing contraceptive methods and were willing to listen to their statements; 90% of interviewees admitted that in recent years, the attitudes of management staff and service staff had improved dramatically.

98% of service receivers believed that service staffs were able to listen to their statements, and the proportion rose from 96.8% before 2000 to 99.2% after 2005. The proportion of those being able to express their own opinions before 2000 was less than 60%

Table 1: The Situation of Follow-up Visits for Contraceptive Measures in Different Years

	Follow-up visits within a month		Follow-up visits after a month		No follow-up visits	
	Persons	%	Persons	%	Persons	%
Before 2000	179	60.1	64	21.5	55	18.5
2000-2004	266	59.0	121	26.8	64	14.2
2005 and later	378	61.7	176	28.7	59	9.6

and it is slightly raised to 63.8% after 2005. The proportion of those who knew nothing about contraceptive methods was reduced from 27.6% to 24.6%. It indicated that the public has made certain, yet small progress in the right of expression.

III. Challenges Ahead

The human rights awareness of Chinese people is far from adequate with awareness and behaviors inconsistent with the theme of human rights protection still pervade, which, however, fails to draw the attention from the grassroots governmental officials and be fully recognized by the public. Over time, it has become a "normal" work style of the grassroots officials. For instance, practices infringing public's privacy such as publicizing the contraceptive measures adopted by women of childbearing age and the reasons of their reproduction have been widely accepted by the majority of cadres and the public. To change this situation, long-term training and education would be required to promote grassroots cadres and the public's understandings of the concept of human rights, thus gradually eliminating the phenomenon of violating the public's right of privacy.

The service abilities of service staffs, especially their skills of consultation and communication, remain to be improved. It is surveyed that even though service receivers' rights are protected during service process, there are still inadequacies in many aspects, closely associated with the service abilities of service staffs. For instance, the majority of service receivers are passive in receiving services. The right to be heard of the public hasn't been fully achieved yet. More than 40% of service receivers cannot express their individual needs and ideas while receiving services, mainly a result from service staffs' lack of communication skills. Service staffs have little knowledge about how to encourage the public to voluntarily express their opinions. Hence, improving the service staffs' work performance is still an arduous and long-term task.

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STUDY ON HUMAN RIGHTS

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The Relationship between Ideal and Reality – The Academic Starting Point of Human Rights Research Concretion

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How can we move forward our cause of human rights so that we can further enhance China's international image of being a state that respects and protects human rights when scientific development is encouraged across the country today? Obviously, only abstractly discussing the notion and other aspects of human rights does not make any sense, for it will only come to a conclusion that lacks realistic pertinence as well as theoretically explanatory power. For that matter, only by concretizing human rights research[1] and making the research conclusions more targeted and theoretically convincing can we reach the above goal. Then, from the perspective of strict academic research, how can we make human rights research more concrete?

This article holds the view that if we want to make human rights research more academically concrete, we must be fully aware of the critical academic problem facing concretion process. We believe that throughout history the theoretical reason why it is hard to achieve concrete human rights research and why human rights issue was therefore used to attack other countries in terms of international relations is that researchers of human rights theory, human rights activists and alike all deem respect and protection of human rights as legally-binding and lofty ideal. In most cases, some people have not thought over the relation between such ideal and social reality and they do not know how to achieve that ideal – which helps the problem how to make human rights research more concrete surface. Therefore, if we want to respect, protect and ensure human rights, we must give top priority to the concreteness of human rights and work to put together ideal and reality.

We hold that, if we want to specify human rights research, we must start academically from the relationship between ideal and reality and undertake an in-depth research and study. In this paper, I will elaborate on this issue from three parts: First, are human rights an ideal? Second, we must view concreteness of human rights from the perspective of relations between ideal and reality. Third, breaking the "kingdom of ideas" is the fundamental solution of concrete humanistic studies.

1. In reality, be it all kinds of efforts since the notion of human rights put forward by the western countries, or our recent measures to underscore the "right to live," they all manifest the concreteness of human rights. But the thing is that all these moves only focus on practice level without embarking on due theoretic research and illustration.

I. Is Human Rights an Ideal?

If we want to show that an in-depth research on the relationship between ideal and reality is the academic starting point of human rights research concreteness, we must make it clear that the notion of human rights itself is an ideal. Then what is an ideal? After going through relevant documentations we come to a conclusion that the China's academia including philosophical community and psychological community haven't got a more appropriate definition than that is given by *Ci Hai* (a Chinese word dictionary): "(1) An achievable vision associated with goal; (2) as expected; satisfying."[1]

Our common belief is that "according to natural attribute and social attribute, human rights are rights people entitled to enjoy. The core of human rights is to empower people's humanity, personality, spirit, ethics, capability to be fully developed; everyone is living in a certain society, so one's rights must not be abstract, and they must be stipulated and protected by the constitution."[2]

At first glance, there is not much in common between human rights notion and the ideal; but if we think it over, things will be completely different – in terms of the notion of human rights, be it "rights people entitled to enjoy" or "empowering … to be fully develop," do not they demonstrate prominent elements of "ideal," "as expected," "satisfying" or "goal" and therefore manifest the element of what it should be, not what it is to be? Do not they embody the two basic aspects of the definitions of ideal mentioned above? In this regard, ideal and human rights are by no means irrelevant, and they have similarities in nature! It is no exaggeration to say that from the perspective of the origin of the notion and its development history, the notion of human rights itself is a wonderful vision that requires constant efforts to realize – it is an ideal! Clearly enough, we are fully justified to start from the relationship between ideal and reality to research and study what hinders the concretion of the notion of human rights and what must be done to address this issue.

Obviously, the aim to fully underscore the notion of human rights as an "ideal" is not to overlook its feature and mix up it with ideal of usual sense – in fact, throughout the history and status quo of human rights development, we can be fully aware of the fact that through five centuries' development human rights notion has now been socialized, institutionalized, internationalized, semi-legalized[3] and politicized and hence it is vastly different from

1. *Ci Hai*, Shanghai Lexicographic Publishing House, 1979, p. 1213.

2. See related exposition in the article "*Practically respect and protect human rights-expounding the implementation of the spirit of democracy and rule of law put forward by the 17th National Congress of the CPC for the forth time*," *Legal Daily* on Nov. 16, 2007.

3. "Semi-legalization" here refers to the phenomenon that although there have been a variety of laws and regulation in relation to human rights, the implementation and correspondingly coercive force of them are not sufficient and perfect, hence the main resort to condemnation of public opinions in ethic and moral sense.

its usual sense. But such development and change was simply reflected in the form of increasingly high operability of the human rights notion; it neither changed its essential content nor feature of "ideal" due to the existence of remaining goals that haven not been met so far.

II. Approach Concretion of Human Rights from the Perspective of the Relationship between Ideal and Reality

As the academia has not attached great importance to ideal and without any systematic research, the same is true for the relationship between ideal and reality. For most people, as ideal itself is "potentially achievable," "as expected and satisfying," so we must do whatever we can to put it into practice in reality, and it does not make any sense to probe into their relationship. Substantially, it is a kind of view that exists when there is no strict philosophical reflection and it only remains at common sense level; unfortunately, no matter all kinds of ideals in people's daily life or concrete actions to protect and ensure human rights, people all follow the same road. Consequently, not many people have realized the need to achieve concreteness of human rights research, let alone deliberately discuss and research the way to achieve it. Then, seeing from the level of philosophic reflection which is more profound than common sense, how should we view the relationship between the two sides? Will discussion and research like this help us achieve the concreteness of human rights research? The answer is yes.

Generally speaking, in terms of philosophy, the relationship between ideal and reality covers two aspects: first, does ideal originate from reality, or reality comes from ideal? To sum up, it is a problem related to its origin; second, what on earth is the interaction between ideal and reality, i.e. is it the relation of one-sided decision or the relation that is decided?

The answer to the first question is clear-cut – ideal which originates from reality not otherwise. However, the answer to the second question is not as simple as that: although people have common belief that if we want to realize certain ideal we must be down-to-earth, our focuses are always on ideal that can play a role in guiding and regulating reality with superiority and we seldom notice that reality can serve as a decisive, and binding power to ideal. As a matter of fact, ideal runs far ahead of reality due to its superiority and it can be set as a goal to play a guiding and regulatory role for reality to some extent and scope, but the decisive role of reality is holistic and fundamental – reality not only decides its concrete target, basic content, specified expression form when the ideal emerged, but also decides whether ideal still holds water, whether it is brought into full play and how the scope and intensity of that role plays. Among others, reality can also decide ideal's future development trend by constantly enriching the content of ideal and improving its form of expression.

In a word, only when being put into the reality framework composed by situations in

the past, in the present and in the future, the lofty and glorious ideal and its significance in regulation and instruction can exist and be generated, developed and carried out! Therefore, if we only focus on our ideal and ignore the reality, it is hard for us to realize the ideal and to bring its importance into full play. What's worse, it may develop into a caprice or wild fancy and become one part of "the kingdom of ideas," which will further do harm to social practice activities in this way or another. To avoid such tendency or consequence, the only remedy is to specify ideals. That is to say, we must combine "hold high the ideal banner" and "in a down-to-earth manner" systematically. Obviously, the same is true to the notion of human rights, which can be considered as a kind of ideal with unique features.

Just because of this, we hold that if we want to make the research on human rights reality-oriented and have strong theoretical explanatory power through concretion, we must pay full attention to the correlation between ideal and reality, especially the crucial restrictive role of reality playing on ideal. In this way, we can truly achieve concreteness of research on human rights.

III. Breaking the "Kingdom of Ideas" is the Fundamental Solution of Concrete Humanistic Studies.

As the name suggests, "the kingdom of ideas" means a kingdom consisted of various notions, existing in people's ideas and playing a crucial role. The concrete manifestation is that the "absolutely universally valid truth outmatches the reality; it plays a role of guidance, measurement, evaluation and domination on the reality; basically featured with abstract, formalization, logicalization, conciseness, repeatability and objective validity, etc, it has got people's trust or even belief. Therefore, the result is that people no longer regard the social practice activities as the criteria for the conclusions of academic researches, on the contrary, some adverse consequences of "cutting one's feet to fit one's shoes" will come along when certain notion or some notions of the "kingdom of ideas" are taken as the standard for the realistic activities and the criterion of judging social activities. For the later, the "academic basis" taking this measure and playing such role in international political area is to put human rights as part of the idea of "the kingdom of ideas" into practice.

Needless to say, we emphasize and point this out not for looking for the theoretical evidence for this rude and unreasonable behavior, but for exposing its mistakes, even at theoretical level. After this, we study the human rights in an opposite way, to guarantee the healthy development of the human rights-safeguarding career. So we have the opinion that only breaking through the "kingdom of ideals" with own efforts, can we organically combine the research on human rights and the concrete social reality. But how can we really achieve this?

In my opinion, we must do the following three things so as to empower the research on

human rights to break through "the kingdom of ideas" to truly achieve concreteness.

First, proceeding from the above correlation between ideal and reality, we should, via a systematic and insightful philosophically critical reflection, see clearly and comprehensively the external reality and conditions faced by the notion of human rights as a specific ideal to be put into practice. This approach can lay a solid theoretic basis and establish a right attitude for academic study, benefiting the application of the concreteness of the research on human rights.

Second, we should expand the academic horizon of research on human rights. By comprehensive and interdisciplinary researches covering disciplines such as philosophy, sociology, legal science, politics, anthropology and science of culture, we can truly walk out of "the kingdom of ideas" into the real "social world." Such a cross-disciplinary practice is aimed to make the best academic preparation for the rich and fruitful concrete researches.

Third, we should concentrate on and carry out a systematic research on the rapid development of the human rights course based on the achievements made in the reform and opening-up process in China over the last 30 years. Such focused probing and research can spot problems, grasp key links and find uniform patterns, so that we can obtain research conclusion, which are reality-oriented and backed by strong theoretical explanation. These conclusions, in turn, can enable us to come up with and develop a human rights theory with Chinese characteristics, thus making the due academic contribution for further healthy development of human rights course in China.

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A Probe into Human Rights Protection in Pharmaceutical Trade

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1. The Issue of Human Rights in Pharmaceutical Trade

In light of negative influence of domestic public health crises, there is an increasing need for developing countries to import tremendous amounts of pharmaceutics from developed countries. However, the exceedingly high price of patented pharmaceutics has far outstripped what people in developing countries can possibly afford. The rights to life and health – the basic rights to be safeguarded by developing countries, therefore, cannot be protected. According to the explanation of General Comment No. 14 adopted by the Committee on Economic, Social and Cultural Rights in 2000, access to (affordable) basic pharmaceutics is the central theme to "healthcare right" in health right.[1] However, ever-increasing and unrealistically high price of pharmaceutics has exerted a fundamental impact on the accessibility to basic pharmaceutics. This does not only contradict the basic human rights of access to (affordable) basic pharmaceutics, but also subject the majority of patients in developing countries to health threats and even life threats by making pharmaceutics unaffordable. Pharmaceutics accessibility has become a serious social problem nagging international society, particularly developing countries. A series of coordinating measures have been adopted by international society to tackle this issue.

2. Regulations in Multilateral Agreement on Human Rights Protection in Pharmaceutical Trade

So far, the main agreement for coordinating and resolving conflicts between patent right in pharmaceutical trade and right to life and health is "TRIPS Agreement" (Agreement on Trade-Related Aspects of Intellectual Property Rights). It is stipulated in Article 27 in "TRIPS Agreement" that under certain special situations, if any conflict between the pharmaceutics patent awarded and public health arises, members of TRIPS Agreement reserve the right to decline awarding patent to this particular pharmaceutics. It is stipulated in Article 31 that

1. See General Comment No.14, *The Right to the Highest Attainable Standard of Health*, E/C.12/2000/4, paras. 8, 11, 12 [EB/OL]. http://documents.un.ort:/mother.asp,2006-12-10.

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under special circumstances, compulsory license can be implemented on the patent, though with 12 provisions attached.

In November 2001, "The Declaration on the TRIPS Agreement and Public Health" adopted by the Fourth WTO Ministerial Conference revised the TRIPS Agreement. It's clearly stated in Article 4 that public health right precedes over intellectual property right; Article 5 and other articles list detailed terms and conditions in TRIPS Agreement that can be used to protect public health and limit patent right; besides, the transition period of the least-developed countries in implementing relevant obligations of TRIPS Agreement with respect to pharmaceutical products will be postponed to the year 2016.

On August 30, 2003, the "Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Decision and Public Health" (hereinafter referred to as "Decision") adopted by the General Council of WTO adopts a means of transitional exemption, exempting each member from the obligations under Article 31 (f) in "TRIPS Agreement" (i.e. products manufactured through compulsory license are predominantly used for the supply of the domestic market). The exemption continues to be effective until this particular term and condition has been revised. This regulation essentially exempts the exporter from the obligation of implementing compulsory license for the sake of merely meeting the needs of the domestic market. In this way, it is easier for impoverished countries to import cheap and counterfeit pharmaceutics in treating AIDS and other serious contagious diseases when necessary.

On December 6, 2005, WTO members passed the "Decision on the Amendment of the TRIPS Agreement" to increase the transitional exemption mechanism in the "Decision of the General Council" in the year 2003 to Article 31bis in "TRIPS Agreement," as the permanent change made to Article 31(f) in "TRIPS Agreement" (hereinafter referred to as "Amendment"). According to regulations in Paragraph 1 under Article 31bis in the "TRIPS Agreement," WTO members may issue compulsory licenses for qualifed importing members to deal with public health issues, for the purpose of production of a pharmaceutical products and its export to an eligible importing members.

In summary, even though the TRIPS regulations are being constantly renewed to provide system guarantee for further coordinating the conflict of interests between pharmaceutics manufacturers and pharmaceutics users, there are still many limitations or hindrances in real applications. The conflict between pharmaceutics patent right and right to life and health has yet to be fully solved and the novel means of coordination is desperately needed.

3. New Insight into Perfecting Human Rights Protection in Pharmaceutical Trade – Establishing International Health Protection Fund

To strengthen protection of human rights in pharmaceutical trade, two measures are

necessary. Firstly, regulations in "TRIPS Agreement" should be continuously improved and revised. This Agreement is the most important regulation under WTO framework for coordinating trades that involve intellectual property right. It is unrealistic and unwise to entirely abandon TRIPS Agreement in dealing with the issue of human rights protection in pharmaceutical trade, because it plays a positive role in accomplishing such goal. Further revision and refinement is a relatively more viable means. Secondly, while refining the "TRIPS Agreement," we may try exploring other means and possible routes to accomplish human rights protection in pharmaceutical trade.

The issue of human rights in pharmaceutical trade is not a simple question whether pharmaceutics patent or right to life and health weighs more. The coordination of the correlation is by no means as simple as who yields at a crossroad. What is behind this relationship is more complicated economic implications aside from the legal system. When it comes to market operations, pragmatism is the basic rule that guides the behaviors of every single reasonable businessman. Minimum investment in return for maximum profits is the ultimate goal every single business person pursues. Hence, under the rules of market economy, pharmaceutics researchers will pretty be much motivated by huge potential profits. Pharmaceutics patent system ensures the recovery of previous investment and acquisition of huge profits once the new pharmaceutics are successfully developed. Capital is all the time profit-driven and it is precisely the strong profit-driven mechanism that effectively motivates the innovation and development of pharmaceutics. However, if excessive emphasis is laid on compulsory license system, it is more than likely that pharmaceutical giants might turn to research and manufacture pharmaceutics that are urgently demanded by the wealthy countries in an effort to meet their pre-set profits and sales volumn, such as pharmaceutics that promise to cure heart diseases, diabetes and cancers. This is because patients from rich countries can better bear the price of pharmaceutics, and thus better able to meet the requirements of many pharmaceutics manufacturers in maintaining their original level of profits. On the other hand, even if the issue of "high price" resultant from pharmaceutics patent right is successfully dealt with, the rights of people in impoverished countries to use pharmaceutics can not be guaranteed. According to the statistics of World Health Organization, currently more than 35 million (or 95% of the world's) AIDS patients (or HIV carriers) live in developing countries. The minimal annual costs of anti-reverse transcriptase treatment far exceed the annual healthcare fees per capita in most developing countries, even if it is performed at a much discounted price or exclusive of non-patent price like research costs. So far, the annual per-capita medical fees in low-income developing countries are only US$23 a year, but the cheapest anti-reverse transcriptase triple treatment exceeds US$200 a year. Those who are in need of treatment could not even afford the cheapest non-patent pharmaceutics without

additional assistance of pharmaceutics and public healthcare services.[1]

It can be concluded that it is extremely difficult to rely on justice or legal concepts to coordinate the relationship between pharmaceutical trade and human rights protection. Economists once raised a paradox regarding the information property right that monopoly of information property right, on the one hand, will motivate and stimulate information manufacturers to develop new information; on the other hand, it will prompt some manufacturers who monopolize information to charge extremely high fees, making information utilizable no longer. In other words, the lack of legal monopolization will inhibit the manufacturing of adequate amount of information. However, legal monopolization will lead to the situation where plenty of information will end up unused.[2] This, in reality, involves the issue of balancing of interests. From the perspective of economics, everybody is selfish. While pursuing maximization of individual profits, conflicts with public interests are unavoidable. Trading of property right has two inter-related goals of efficiency, i.e. maximization and balancing. Maximization is viewed as the goal of each individual economic entity, i.e. maximizing effectiveness, profits; balancing refers to lasting interaction while maximizing the interests of each side.[3] While manufacturers and consumers are relentlessly increasing their right resources, they must make compromises so that they can obtain benefits without jeopardizing the interests and rights of others. This is known as "Pareto Optimality." It was pointed out by Professor Liang Xiaomin that every single law has a motivational mechanism that may serve as a temptation that induces people's ante factum. Good laws shall encourage all interested parties to choose reasonable behaviors, rather than simply limiting the behaviors of a portion of people. Hence, a better assumption is that both the rights to life and health and profits of pharmaceutics manufacturers shall be safeguarded. Pharmaceutics price needs to be reduced to protect rights to life and health, meanwhile the relatively high pharmaceutics price, a reasonable one though, is also required in terms of safeguard of the international trade involving patent pharmaceutics. Then who is responsible for paying the price margin? The author suggests the alternative of payment by public funds. This kind of public funds is constituted of the shares paid in by each country. Therefore, now that developing countries and undeveloped countries will definitely welcome the construction of a fund related to international health, there comes an ensuring problem that will the developed world agree to provide funds to deal with the issue of human rights in other countries?

1. Qu Sanqiang: *Discussion on Public Health and Pharmaceutics Patent Compulsory Licensing* [J], *Yunnan Universities of Nationality*, 2007 (1).

2. [US] Robert Cooter, Thomas Ulen: *Law and Economics* [M], translated by Zhang Junqian, Shanghai Sanlian Bookstore 1994 edition, Page 185.

3. Zhang Wenxian: *Research on Western Philosophical Ideologies in the 20th century* [M], Law Press, 1996 edition, Page 22.

(1) Feasibility Analysis of Building Funds

From the perspective of international law, there is no single international law compelling countries to provide funds for human rights protection in other countries. Nonetheless, in dealing with the thorniest issues in global health sector, it is absolutely possible to forge treaties among countries to construct such kind of international obligations, since developing countries share the same interests in face of this problem.

Firstly, contagious diseases can transcend national borders, which are the chief culprit for high mortality rate in developing countries, particularly undeveloped countries that have been plagued by AIDS and tuberculosis. Those contagious diseases can move across national borders. Human beings prefer gathering and traveling, living closer to animal life, polluting the environment and relying on healthcare system with exceedingly high demands. This sort of permanent circulation of gathering, consumption and movement has provided opportunities for contagious diseases to mutate and spread among people and across national borders. In this way, a particular endemic disease discovered in a particular region will affect worldwide. Hence, developed countries must face a series of problems brought by these contagious diseases.

Secondly, the spread of diseases affects the development of world economy. Even though some non-contagious diseases that are unique to some developing countries may not directly threaten the developed countries, but the impact of diseases on economy is pretty evident in both developed countries and developing countries. The local contagious diseases in impoverished regions have posed a dire threat to trade and commerce. Unhealthy countries have turned into untrustworthy trade partners, who are incapable of developing and exporting food, products and natural resources. Impoverished consumers are unable to afford expensive products imported from the western world. They cannot afford some vital vaccines and pharmaceutics and their inability to repay debts has affected the operations of international financial organizations. Their demand for humanitarian assistance has affected non-governmental organizations and charity organizations. In light of economic globalization, there is no single country capable of working in an independent and separate manner from the rest of the world.

At last, diseases affect international security. The extremely unhealthy condition of a particular region in the world may threaten to undermine the security of the US and its allies. The reason is that the extremely unhealthy condition compromises the government's ability to survive, and prevent and control humanitarian crisis and wars. This has affected the military peace in these regions and humanitarian operations, strategically destabilizing the countries that serve significant roles. Regional instability may also affect the surrounding countries (the impact of refugees is hard to ignore), and therefore weaken the regional stability and threaten international security.

(2) The Detailed Framework Design for Building Funds

So far, plenty of academic researches have shown that non-governmental behaviors have exerted profound influence on health, including the media, international corporations, social communities and organizations, as well as charity organizations like Gates Foundation, Clinton Initiatives or the Carter Center. However, what the author suggests is a form of convenient high-level assistances, especially those facilitating special purposes, and a system wherein basic survival needs can be met and a continuous monitoring and implementation mechanism is in place. In light of this, one possible solution would be to reach agreements on the global health. The contents of agreements are not only to establish a foundation, and it can help build a sustainable health system, particularly emphasizing international flow of health nursing staff and development of powerful monitoring lab and other facilities. It can create stimulating factor for the affordable pharmaceutics and vaccines and serves a binding force after national approval is gained. It can set up inter-governmental international organization or utilize existing international organizations to supervise, assess and implement the goals.[1] This sort of thinking is tentative, and not yet perfect, but the author believes the following two points should be noted.

Firstly, this fund shall be established under the World Health Organization. First of all, the conflict arising between pharmaceutical trade and human rights can be viewed as part of the issue of global public health, while the WHO is the most authoritative organization in dealing with the problem of global public health. So far, the problem of global public health, as a result of rampant spread of contagious diseases, has drawn widespread attention from the international society, and there is a close association between the conflict between pharmaceutical trade and human rights and contagious diseases. Besides, the issues of disease treatment, assessment of medicinal effects and pricing and monitoring of pharmaceutics involve plenty of professional knowledge and techniques. Apparently, WTO has professional advantages. Besides, both WHO and WIPO (World Intellectual Property Organization) are categorized as exclusive organizations under the United Nations, so as to facilitate communication and cooperation on patent right and human rights between WHO and WIPO as well as Human Rights Council under the United Nations.

Secondly, a framework agreement should be established to build a foundation so as to ensure its legal power. The process of revising TRIPS Agreement is a clear indication of the efforts invested by each nation in resolving the conflict between pharmaceutics patent and right to life and health. Mr. Trevor Jones, the Chairman of the Association of British Pharmaceutical Industry, also admitted that "even though the 'Decision' fails to stamp out the problem entirely, it expresses the shared dream of the public in seeking all sorts of

1. See Lawrence O. Gostin, *Global Health Law Governance* [J], Emory *International Law Review* (2008), 47.

methods to deal with the illnesses." Meanwhile, the increasingly serious global public health crisis has inspired the passion of developed countries in seeking for international cooperation on control of diseases, particularly contagious diseases. As stated in the above analysis, developed countries also have a lot to gain in resolving the conflict between pharmaceutics patent and right to life and health. Hence, there is a great likelihood that all the countries in the world will agree to a relevant agreement through negotiations. The main contents in the agreement regarding establishing the foundation include: the purpose of setting up foundation is to provide financial assistance to negotiations and cooperations on coordinating pharmaceutical trade and human rights protection. The funds come from the share submitted by each member, and mainly from developed countries. The management and operation of funds are to be uniformly implemented by WHO or an exclusive organization under WHO, who is responsible for drawing up the assessment plan for pharmaceutics pricing, rules for utilizing funds and carrying out supervisions. It is also responsible for providing emergency funds to member countries suffering from public health crisis, when necessary, and preventing the catastrophic humanitarian disaster that breaks out nationwide from affecting other countries. Appropriate profitable activities can be launched to ensure their increment, based on reasonable risk assessment.

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On National Obligation in Human Rights Law

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The relation between individual and national obligation lies at the core of constitutionalism; the materialization of individual and civil rights depends on the implementation of national obligation – both a significant subject in modern legal state and a core theoretical issue of human rights law. Lots of research has been done in the academic circle concerning human rights while the study of national obligation has been largely underplayed. The study of national obligation from the perspective of human rights laws as discussed in this paper therefore assumes significant practical and academic implications for human rights research.

I. Each State is the Rigid Subject of Human Rights Obligation

The realization of human rights rests on the implementation of obligations; the subjects can be diverse, ranging from states, international organizations, NGOs (Non-Governmental Organizations) to individuals. Nevertheless, it's the state that stands to be the overriding obligor whose functions and obligations far outweigh other obligors, in that national power is carried out as tools to materialize and protect civil rights. The fundamental national obligation lies in the protection of civil rights, without which the value of its existence cannot be realized. International human rights law stipulates sovereign states as the primary obligors of human rights protection. This national obligation has also been explicitly stated in a wide array of national human rights documents: nearly all human rights conventions include the similar provision that "each state party to this convention shall…" or "each state party to this convention acknowledges…;" the provision is also embraced in a variety of international human rights action declarations. Among the various subjects of human rights obligations, the state obligor is rigid, primary and legal, yet the obligations of individuals, NGOs and international organizations are flexible, secondary and voluntary.

The rigid establishment of national obligations as part of human rights obligations has deep-rooted legal foundation. The core of national obligation involves the game between rights and power, further evidenced from the relations between cooperative rights and adversary rights. Strictly speaking, human rights are adversary, which comprises the logic starting point, since national obligation is principally based on the conflict between

individuals and the state, that is, individual rights versus national power. Proposed through or in opposition to public power, rights are what people claim from their state. It is the unchangeable rule that any public power free from restriction would result in power abuse. The theory of the origin of violence by Hobbes, the theory of family origin by Locke and Rousseau's social contract theory based on public interests all include statements on the relation between public power and individual rights. It is often mentioned in classical philosophy that individual rights constitute the foundation of national power which in turn derives from and is subject to individual rights. Human rights mainly guard against the infringement of national power; national obligation manifests itself in the action and inaction of public power. In general, the state shall not violate or deprive citizens of individual rights, political rights and freedom, which primarily calls for the inaction of the state, though sometimes the action of the state is also desirable; when it comes to economic, social and cultural rights, confirmative action of the state is required whose obligation lies in creating favorable conditions for the realization of these rights, despite some occasions when inaction from the state is equally necessary. It is through the action and inaction that national obligation is demonstrated. Both cooperative rights and adversary rights are components of human rights. In that sense, the action and inaction of public power reveal its cooperation as well as confrontation with human rights subjects. Both conflict and cooperation are taken in the actualization of human rights. Adversary rights are the original forms of human rights; cooperative rights nevertheless are the derivative of human rights where human rights subjects in combination with positive public power demand the state to enable favorable conditions during its discharge of obligations. As the two sides of a coin, the two types of rights are organically integrated in human rights. It is though confrontation to cooperation, cooperation among confrontation and confrontation among cooperation that human rights are realized. As regards adversary rights, respect and tolerance as omissions, are expected of the state, which, at the same time, fulfills its obligation of preserving and realizing civil rights as well as liberty in an active manner; as far as cooperative rights are concerned, both active promotion and preservation of social-economic-cultural rights and respect for inaction are required of the state. It is through the selection among cooperation versus confrontation that national obligation constantly advances the realization of human rights.

II. Categories of National Obligation

As the prerequisite for the realization of human rights, what does national obligation connote? For that matter, there are three categories of national obligation in terms of its protection of human rights.

(1) Moral Obligation

Human rights are not the gift from the state, but what each individual is born with that

require the respect and preservation of the state – the primary objective of the government and the legitimate foundation for its possession and exercise of power. The social contract theory by Locke analyses national obligation from the perspective of civil rights, arguing that each right endowed by natural law is deficient so that people have to unite by contracts and form the state for the protection of their rights to life and property. As stated by such theory, national obligation is set to satisfy the demands of rights, indicating that the satisfaction of the latter is what justifies the existence of the state along with its power; it is also the requirement of rights that determines the content of national obligation. That is, national obligation rests on the requirements of rights. Locke specified three types of people's needs: legislative needs, judicial needs and the needs of national defense, and created links between these needs to specific state organs and their responsibility; this is what later developed into the separation of power in western countries that identifies the obligation for legislative, judicial and executive branches. In that sense, the notion "determinate of national obligation by the needs of rights" derived from Locke's theory, has actually been testified by western legal countries. This concept, in the Chinese context, is to prioritize people's rights which should be upheld as the fundamental principle for the party and the government to run this country. Consequently, the protection of human rights is the moral obligation compulsory for each state.

(2) Statutory Obligation

As stated in the preamble of *Universal Declaration of Human Rights*, "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law." Touching and thought-provoking, this notion unravels the rule that a state with no protection of human rights would forever stay in chaos. Secondly, it is on rule of law rather than the legal system that the protection of human rights depends, i.e., human rights need legalization. To put it further, in the absence of protection from rule of law, the realization of human rights would amount to subjective Utopia. The establishment of national power as the protector of human rights and civil rights is not only its moral foundation, but also its legal obligation under the Constitution. Chinese Constitution used to focus more on the protection of smooth exercise of national power; this notion of supremacy of the state forced human rights and civil rights into a secondary position. The constitutionalization of human rights thereafter prioritizes human rights as the highest principle of the Constitution. To put into effect the state's constitutional and legal obligation of protecting human rights, Chinese government formulated and released *National Human Rights Action Plan (2009-2010)* in April 2009. This plan, along with its due respect for the universality of human rights, proceeds from basic national conditions and materializes the prioritization of people's right to subsistence and development in its protection of human rights; it also legally ensures

people's equal rights to participation and development based on the sound and balanced social and economic development; it takes every effort to resolve people's most concerned, most direct and most practical problems, promote social fairness and justice, and guarantee all people's rights to education, employment, medical and old-age care and housing; the plan adheres to the fundamental principle where people are the masters of the people and enlarges citizen's political participation in an orderly manner from every level and every field; it also endeavors to improve democratic system, diversify democratic forms, broaden democratic channels, and legally conduct democratic election, democratic decision-making, democratic management and democratic supervision as well as forcefully guarantee people's right to be informed, right to participation, right to be heard and right to oversee. This initiative carries significant implications[1], demonstrating that Chinese government, under the principle of respect and preservation of human rights, sets the establishment, configuration and operation of its national power in a position conducive to the preservation and realization of all people's human rights.

(3) International Obligation

The state is the primary subjects of rights and obligations in international human rights law. International obligations to protect human rights refer to all valid obligations each state must undertake in accordance with its accession to international human rights treaties. The adjustments of rights and obligations by human rights conventions are carried out on the basis of the jural relation between the state and beneficiaries of human rights. The purpose of human rights conventions does not lie in the exchange of rights and obligations among signatory states, but the imposition of obligations of human rights preservation upon each state in an effort to guarantee individual's human rights within the state. Under international human rights conventions, national obligation[2] has to do with the recognition, respect, promotion, realization and protection of individual's human rights. Recognition suggests that each signatory state recognizes human rights as the rights under positive law within its domestic legal system; respect is the state's passive inaction, requiring that each state shall not interfere with individual's exercise of rights or violate individual's specific rights; promotion and realization are the positive duties of the state mainly concerning individual's economic, social and cultural rights where the state takes confirmative measures to provide conditions for people's access to the resources and strengthen their entitlements to these rights; protection is a procedural obligation that calls for the remedies from the state to human rights that are subject to the violation of the government and others. Protection of

1. *National Human Rights Action Plan of China (2009-2010)* Chapter 4 of the Introduction, released on 13 April 2009, http://www.gov.cn/.

2. It mainly refers to *International Convention for Civil Rights and Political Rights* and *International Covenant on Economic, Social and Cultural Rights*.

individual's rights is the state's most important obligation; the absence of stipulations of remedies to violated human rights or the incapability of executing the remedies would, to a large extent, fail international human rights conventions as a whole. The recipients of national remedies can be those whose human rights are violated by the government or by others. The failure to provide timely and effective remedies can equal indulgence or even encouragement for the infringement upon human rights, therefore putting the state at a disadvantage bearing indirect responsibility for human rights violation. Judicial remedies from the state in protection of human rights stand to be the ultimate form of protection. From the perspective of the legal system, when it comes to governmental responsibility, the right of action is the only way to protect actuality of human rights in an equal and ultimate manner. To put it into another way, the legal system should guarantee people's right to freely express their demands for human rights protection – the right that is fundamental compared with other human rights under the law. In that sense, the state is subject to international obligation in its protection of human rights. In *National Human Rights Action Plan (2009-2010)*, the Chinese government attaches particular emphasis to the promotion of international human rights exchanges, dialogue and cooperation, the unification with countries all over the world and joint advancement of the healthy development of world human rights cause as well as the contribution to the creation of a harmonious world with lasting peace and common prosperity, which indicates the progress of the Chinese government.

Drawn from the above analysis, as regards right entities, it is the moral duties to human rights that correspond with national obligations, which is based on the consideration of human rights as moral rights; when it comes to the norms of human rights law, national obligations as stipulated by human rights law correspond with national legal duties and international human rights obligations.[1]

III. National Obligation Transmuted from Human Rights Forms

The division of the mainstream academia classifies the forms of human rights into three categories: deserved rights, legal rights and actual rights. As drawn from the foregoing analysis, the state assumes three types of obligation in its preservation of human right which leads us to the deduction: national moral obligations correspond to deserved rights; national legal obligations and international obligations to legal rights. The absence of conversions among the three forms of human rights and confinement of each form exclusively to its own category does not suffice to unravel the true nature of human rights or facilitate the exploration of approaches to human rights realization. The logic of human rights realization dictates that the state shall "transform deserved rights to legal rights which ultimately are

1. Here refers to the international human rights obligations, which is beyond the obligations that among nations within the *Public International Law*.

converted to actual rights." And this is the very national obligation to materialize human rights in reality.

(1) National Obligation to Respect Deserved Human Rights

Deserved rights, also known as residual human rights, refer to the human rights that have not been transferred to the state. According to human rights law, deserved human rights are the rights under the deserved state which have not earned the state's legislative recognition but are likely to be recognized in the future, Only when the state has acknowledged individual's "deserved rights' are national obligations to protect them necessitated. Where the state negates the existence of "deserved rights," national enactment of legal rights would amount to water without a source or a tree without roots. Deserved rights, as the source of legal human rights, put down the moral foundation to evaluate the practice of the state's respect for human rights.

(2) National Obligation of Timely Legislation of Legal Rights

As the organic integration of logic and value judgments, legal rights are the expression of deserved rights in the form of law. The core of legal rights does not have to do with whether the law has demarcated the limits and scopes of rights, but rather the content and standard of the demarcation. What legal rights reflect is the dialectical relationship between subjects of legal relations and the state. It is this very internal contradiction originating from social material life that comprises the nature and core of legal rights. The purpose of legislation lies in the protection of freedoms and rights, instead of limiting them. It is essential that legislators correctly realize the inherence of deserved rights in their legislation practice and truthfully reflect demands of social rights by social subjects. Demands do not equal to rights; only the legitimate part acknowledged by law can turn into rights. Human needs along with the pursuit for interest derived from which become the trend of rights and source of motivation. Effective legal protection of deserved rights would not be possible until they are elevated to legal rights by legislation. When "deserved rights" transform into "legal rights" through the recognition of law, they become clear and concrete, ascending to the status of binding national will imposed on all citizens within the state the execution of which is in turn guaranteed by coercive force. The protection of human rights by law largely dwarfs that by social organization's regulation, local rules and conventions as well as ethics and morality, etc. Moreover, the law, in itself, is the manifestation of fairness and justice the nature of which determines the equal status of everyone before the law.

Before gaining recognition and protection by the law, human rights should exist as deserved rights in various forms, say, creed and constitution of social organizations including social communities, local rules and conventions, social customs, habits, traditions and religions, people's ethics, morality and social political awareness, distinguished feature of the party or the respect for traditions, etc. However, human rights in the form of deserved rights

suffer from weak protection mechanism or even vulnerability to violation. As proposed by scholars, global cultural practices are moving in two directions: respect or deny human dignity and human treatment. Human rights violations in the name of religion or ideology are rampant worldwide. Reflections upon rights in this form are gradually conducted by humans in search of new approaches for human rights realization. Translation of these rights into legal ones results from the restructure of diverging interests of each party, which is not subject to people's will. The legislation and establishment of real human rights acknowledged by the majority and the authority group has become inherent requirement by human rights development, thereby promoting the transformation of deserved rights to legal rights and ultimately materializing human rights. This is the national obligation in relation to the respect and protection of human rights.

(3) National Obligation to Realize and Protect Human Rights

As the rights people really possess and wield in their production and life, actual rights are the result of or the actual state brought by the legalization of deserved rights centering on the practical exercise of human rights. Actual rights are the rights actualized in social relations and the ultimate product of rights transformations. As the ultimate destination of rights and the highest values, actual rights constitute the highest goal for subjects of rights. Real materialization of human rights cannot be achieved until deserved rights and legal rights are transmuted to actual ones.

To some extent, the history of rights is the history of people's pursuit of actual rights. The realization of rights is the indicator of the constant rationalization of social order, the sign of social progress and one of the main manifestations of people's extrication from contingent liberal and independent life. Actual rights constitute the foundation for the society subject to the rule of law, and law provides a variety of means and resources to facilitate the transformation of legal rights into actual ones while stipulating rights. Actual rights can also serve as an important yardstick against which to measure the level, quality and scale of rule of law. The narrower the gap between actual and legal rights, the higher the level of the rule of law. Social responsibility imposed on each individual and the degree of individual's liberty and independence are subject to national power. The state's distribution of national power, as the legal obligation to legitimate the country itself, directly determines the existing forms of actual rights.

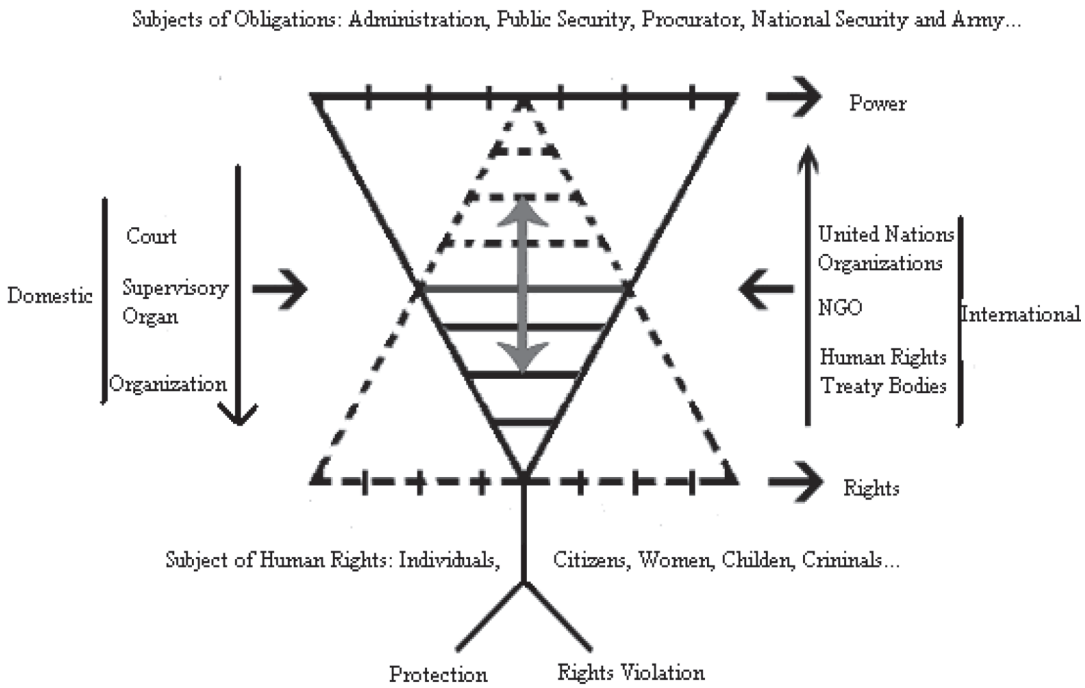
It is the realization of actual rights in reality rather than the existence of legal rights by which the human rights conditions of a country is evaluated. We can trace to the management theory "Cannikin Law"[1] that the capacity of the barrel is determined by the shortest piece of wood rather than the longest one. There can be one common problem for every organization

1. Cannikin Law is proposed by an American management scientist Peter. More information: [EB/Ol] http://wiki.mbalib.com/wiki/%E6%9C%A8%E6%A1%B6%E5%8E%9F%E7%90%86,2009-10-24/2010-6-25.

that its components are uneven in quality and it is the disadvantageous one that decides that entire level of the organization. Applied to human rights laws, the theory suggests that the key to evaluate the truthful human rights conditions of a country has to do with its vulnerable groups, that is to say, whether the rights of the new generation of workers, petitioners, AIDS patients, persecuted religious believers, political prisoners and their family, human rights defenders at peril are duly respected and protected by the state.

(4) National Obligation to Convert Forms of Human Rights in Time

Deserved rights are the "source" of rights and actual rights the "fruit." People in their social life most concern themselves with "where do my rights come from," "what rights should I have had," i.e. the "source" of rights; they are also concerned with "how are my rights now," "what rights do I actually possess," i.e. the "fruit" of rights. Legal right is the synonym of the role laws play in the transformation of deserved rights to actual rights; as the medium and bridge of this transformation, legal rights ultimately serve deserved rights and actual rights. The realization of actual rights (the "fruit") from deserved rights (the "source") through legal rights (the "stream") consists in the state's timely legislation of deserved rights as legal ones which are ultimately executed and materialized as actual ones. Effective protection of deserved rights would not be possible until they are converted to legal ones, the realization of which can only be achieved with their transformation to actual rights. To put in another way, the transformation of deserved rights to legal rights and ultimately to actual



rights is the basic way in which human rights are realized in social life; it is also the national obligation. The actualization of transformations among the three forms of human rights and discharge of its moral, legal and international obligations are the yardstick against which the legitimacy of the state can be tested.

IV. Game Model Construction of National Obligations

Disregarding the three types of national obligations in relation to human rights protection or national obligation in undertaking transformations among the three forms of human rights, the realization of human rights rests on the actual implementation of national obligations. How do national obligations operate in a microscopic perspective? To reveal the role national obligations play in jural relations, this paper tries to construct a game model between subjects of national obligations and those of human rights for better analysis.[1]

From human rights to human rights law, attention should be paid to the legalization of human rights. Obligations and rights, as a dialectical unity, are a pair of basic categories in general legal relations. As stated by Marx: "there is no right that doesn't come with obligation; and vice versa." But in human rights legal relations, which differs from other legal relations, rights and obligations are not opposite, in other words, not balanced. That is because this legal relation is between individuals and the state.[2] Individuals are the subjects of rights while the state and the government are those of obligations. National obligations mainly refer to duties of the state and the government in respecting, protecting, promoting and assisting human rights. As a result, in human rights legal relations, the objects have to do with the action and inaction of public power which is the key point of the research on national obligations. The essence of the constitution and government also manifests itself in the limitation of public power for the protection of human rights, which is on the list of the content of rights. There are two pairs of indivisible categories: the subjects of obligations and those of human rights; rights and power. The former suggests that the subjects of obligations serve those of human rights, while the latter involves the origin of power. The game relation between the two pairs of categories is obvious. As shown by the mode, subjects of national obligations are set on the top horizontal line of the solid inverted triangle, such as the administration, police, procurator, national security and the army; they take control of national public power and are subjects of both rights and obligations. Subjects of human rights reside on the horizontal line of the dotted triangle, including individuals, citizens,

1. The conception of this model was inspired by the speech of Doctor Lone lindholt of Danish Institute of Human Rights. The graphic rendering of the model was undertaken based on my hand drawing by Xiong Zhonghua, the graduate of grade 2009 in Institute of Art&Design in Guangzhou University and Li Lina, the graduate of grade 2009 in School of Law in Guangzhou University. I'd like to extend great gratitude to the two students.

2. "Atomic Objects" are condensed here for convenience only, which do not embrace all objects. They include but are not limited to general subjects.

women, children, criminals and the like; entitled to full freedom and rights, these people, as subjects of human rights, are those who transfer their power to the state and supervise its exercise. In this mode of human rights legal relations, the enlargement of human rights subjects from general ones to particular ones is completely under the protection of subjects of national obligations.

In this model, the vertex of the solid inverted triangle represents power and that of the dotted triangle stands for rights; the relationship between the two vertices is the game relation between rights and power, as demonstrated by the vertical red line in the middle. While protecting rights, power is also likely to commit rights violations; the impact of rights on power can be both supportive and restrictive. When the vertex of the solid inverted triangle moves from the bottom up and spreads over a whole area from one point, it suggests that power is subject to growing supervisions, more and more services are offered to rights by power and national obligation is increasingly strengthened; conversely, when the vertex moves from point to point, it means that power is swelling and more likely to commit rights violations except for a few occasions when particular rights are under special protection; national obligations in this situation fail to provide service for more human rights subjects. Consequently, the vertex of solid inverted triangle calls for democratic supervisions from the rights subjects in the dotted triangle. In the dotted triangle, the subjects of rights undertake systematic supervisions on the exercise of power, therefore maximizing the intersection of the two triangle; as shown by the blue line in the middle, the service by power and support of rights help realize Pareto Optimality in the game relation between power and rights. To enable service for rights subjects from obligation subjects and achieve Pareto Optimality in the game relation between rights and power call for power supervision and justice correction from domestic supervisory organs, neutral courts, free media and the like shown on the left side of the model. Furthermore, universality of human rights gives rise to external supervision on the sovereign state from organizations in the international community demonstrated on the right side of the model, including UNO (United Nations Organization), NGOs and Human Rights Treaty Bodies, forcing the state to fulfill its national obligation of human rights protection. This model typically explains the game relation between rights subjects and obligation subjects and that between rights and power, therefore revealing the dualism of public power in its fulfillment of national obligation, which, while protecting human rights, is also likely to commit impingement upon human rights.

Conclusion

In summary, human rights, rather than the rights of the state or the government, relate to individuals' life, dignity and other rights. The state's respect and protection of human rights is more than the political claim, but the legal obligation binding the exercise of national

power which lies at the core of the entire constitutional system and exerts the highest legal effects. It is human rights that give birth to national obligations and legitimate its existence; national obligations therefore provide the fundamental protection for human rights. The realization of citizens' basic rights involves a large variety of factors that are primarily under the protection of the state. The state is the primary subject of obligations when it comes to human rights realization. It is the national obligation that constantly advances human rights protection amid both cooperation and confrontation between power and rights. National obligation can be classified into three categories: moral obligation, legal obligation and international obligation. It is obligation of the state to "transform deserved rights to legal ones and ultimately translate them to actual rights in time." The conversion among the three forms of human rights along with the implementation of national obligations at the three levels (political, legal and international) are referred to the evaluation of the legitimacy of the state. The mode illustrating the relation between subjects of national obligations and those of human rights reveals the dualism of public power in its discharge of national obligations, which, while protecting human rights, is also likely to violate human rights. This is the paradox of human rights. China has strong national power while suffering from weak awareness of the national obligation of public power. For this reason, the actualization and fulfillment of national obligations at the level of institution and practice stand as the key to the realization of human rights.

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On Human Rights and Gender Equality Rights

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Gender is a fundamental property of human being. And discussion on human rights would be impossible without involving gender equality, which is originated from the existence of gender. Therefore, we have to deal with the concept first.

Scientific research has found that there are at least five dimensions to existence of gender: 1) genetic gender – gender determined by chromosome; 2) biological gender – gender determined according to reproductive-gonad hormone; 3) physiological gender-gender determined by reproductive-sexual organs; 4) psychological gender – gender determined by individual self recognition; 5) social gender – norms for value, roles and code of conduct attributed to each gender by the culture in the society, and people's internalization and the process of internalization.

Regarding the five dimensions of gender in human being, there are four points worthy of attention. First, each dimension is stable in its own right, but this does not mean it is invariable or unchangeable. Second, within each dimension, there are wide differences, but the differences are not insurmountable or starkly polarized. Third, each dimension is constantly changing, in concomitance with scientific, technological and cultural changes. Fourth, there is considerable intimacy and relevance among the five dimensions, but they are not inseverable or incapable self demonstration. Further more, even for natural gender, there is no polarization between pure male and pure female.

According to scientific studies, on the dimension of genetic gender, there are a few people who have no or excessive X or Y chromosome, for example, those with Turner's syndrome, female with Congenital Adrenal Hyperplasia (CAH) and male with Androgen Insensitivity (AI). It is due to the diversity, difference and changeability of gender, gender equality, i.e., people of both genders are born equal, is recognized, and the new expression "gender spectrum" comes into being. In my opinion, gender spectrum can be defined as: like spectrum, gender exists in the form of a successive whole, the insider of which is mutually harmonious, diversified, and colorful. And there is no differentiation between normal and abnormal, or noble and humble. Currently, the terminology is being used to describe the diversified existence of gender. (Vanessa Baird)

Existence of gender precedes that of gender rights, i.e., rights of people awarded by

gender. Like general human rights, gender rights also fall into two categories. The first one is born rights. The second one is capacity rights relevant to the role of an individual. However, born or awarded, gender rights cover the right to subsistence and development. For instance, freedom, safety and life are born rights. Filial rights, parental rights, couple rights and social involvement rights and land contractual rights are capacity rights. One more example: the imbalance between female and male in new-born babies is essentially because female babies are deprived the right to be born – a born right and capacity right – a capacity right, unlike the media frenzy describing it as men devoid of the right to marry the opposite sex – the capacity right of become a husband.

From the perspective of rights, the core of human rights and gender rights is equality, fairness and impartiality. Based on the definition of equality proposed by Plerre Leroux the famous philosopher and utopian socialist of France in the 19th century, the two key principles – that of fundamental equality and concrete responsibility equality by Ronald Dworkin, and the definition of "fair justice" underpinned by John Rawls, the great American philosopher and ethicist, as well as his description of society as a fair cooperative system, the present thesis defines equality in the realm of human rights as: in all societies, all groups and individuals are entitled to the same resources related to their survival and development and under no condition should they be subjected to manipulation or control by other groups and/or individuals – all groups and individuals are the same in value and significance of existence, and they are supposed to bear responsibilities for their choices and decisions.

The thesis defines fairness as: groups and individuals under the same conditions or with the same needs deserve the same treatment, while those with different conditions or needs should be treated separately. It defines impartiality as mutually beneficial relations established at the very first stage of equality (Rowls' "the curtain of innocence") by the parties that are equal, free and logical – fair justice. Therefore, the starting point and orientation of human rights should be: difference is no excuse for inequality, unfairness and unjustness; every one is born equal, and are entitled to equal and impartial treatment. Accordingly, those for gender equality under the framework of human rights should be: gender difference is no excuse for inequality between genders. The genders are born equal, and are entitled to fair and impartial treatment.

As for the relation between human rights and gender rights, I believe that the latter is an important component of the former, which is a collective term encompassing various group rights, and that the two are interactive. It's just like the relation between the rivulets and the river: when there is water in the river, the rivulets are overflowing; when there is no water in them, the river will be dry. It is just because human rights are a collective term for various group rights, the realization of general human rights based on accessibility of abstract and average human rights does not necessarily symbolize the realization of concrete

group rights, and promotion of general human rights does not necessarily bring about advancement in concrete group rights, such as gender rights. For example, the United States failed to notice the importance of national/descendent equality when proposing human rights for the first time. It is not until late 1960s that it began to pay attention to eliminating racial discrimination. And in 1970, the Nixon administration announced the policy of encouraging self-determination among Indians. European countries forwarded the concept and theory of human rights back in the 17th century. However, it is not only the 19th-20th century that women are theoretically and practically given the right to voting and equal employment. Until today, gender inequity featuring male superiority against female inferiority, male dominance against female subordination, and male affluence against female deprivation – the loss of women's rights is still a major social problem troubling many European countries. However, economic and social development does not entail acquisition and/or promotion of rights, including gender rights, by disadvantaged groups. For example, in China there are widespread difficulties in employment for female college graduates, impoverishment of single mothers and aggravating gender imbalance among the new-born. Therefore, on the stance of gender equality, fairness and impartiality, social gender should be taken as an important perspective, gender as a key field for promoting human rights, and gender equality as a primary concern in practicing human rights.

In today's China, exercise of human rights might and should be emphasized from the angle of social gender, so as to promote gender equality. There are three basic conditions for this argument. The first one is vicissitude of the core driving force for social progress. If human resources were the core driving force for social progress, the development of human society has undergone three stages: First, the era of re-productivity, during which the size of population was cherished, but men's role in reproduction was not fully recognized. Therefore, it is an age of goddess – women were elevated to the position of gods. However, with invention and wide application of ferrous tools, the society entered the age of physical strength, and individual's brawn became the most force energizing social development. Due to their superiority in strength and the recognition of their role in procreation, men replaced women on the altar, heralding the advent of male divinity. Since entry of the industrialized society, human society has been using machinery. However, with the arrival of electronic and information eras, intelligence and competence replaced physical strength to become the core impetus for social progress. Accordingly, the society enters the age of intelligence, in which, gender is not the sole standard for differentiate the strong and the weak or the competent and the incompetent, since male and female are roughly the same in intelligence. Therefore, human society was able to enter the age of human being, only in which can gender equality be realized. The second is the transition in the role of family. The family has been the cell of Chinese society, and once was the most reliable provider of well-fare and safeguard.

However, with rapid progress in industrialization and urbanization, income boundary between family members is becoming clear by the day; the function of family is constantly turning toward the outside; individual's consciousness of rights becomes sensitive; and the function of family as the community of interest and safeguard of well-fare is gradually disintegrating. Individuals are replacing families as the cell of society, and practice, realization and pursuit of traditional and local "family equality" are being replaced by those of "personal equality" with modern and western characteristics. From the perspective of gender, each individual is an "individual with gender." Therefore, the practice, realization and pursuit of individual equality will surely be those of equality of individuals with gender. The third condition is that people's needs for gender equality are strengthened. The expansion of individuality brought about by modernization has highlighted gender spectrum, strengthened the rationalization and legitimatization of gender diversity, and needs for gender equality have evolved from attention to equality between men and women to equality among genders. The realm has been expanded, its connotation intensified, and sensitivity of social gender strengthened, becoming an important part of people's needs for equality. Promoted by intelligence as the core impetus for social progress, gender equality has taken a new stride and entered a new phase of development, in an increasingly individualized society, with heightened needs for gender equality.

Obviously, gender equality is completely different from male chauvinism, male domination, patriarchy/privilege of husband. However, we have to tell the difference between gender equality and the existent "equality between men and women" and "feminism," if there is any. In my view, gender equality is quite different from those two terms, at least in five aspects, regarding starting point and goal.

First, gender equality emphasizes general human rights for all genders, i.e., different genders can be given equal, fair and impartial treatment in different fields and aspects. It does not concern one particular group only. Even for attainment of rights by the disadvantaged gender groups like women, the progress in general gender human rights should not be used to deduce the practice of common gender rights.

Second, gender equality opposes all sorts of gender hegemonism. It emphasizes mutual respect between genders, and joint efforts for constructing a gender harmonious society characterized by mutual dependence, mutual prosperity and mutual help.

Third, gender equality opposes pressure and restriction on all genders by powerful traditional gender institutions led by male chauvinism/male dominance, and emphasizes establishment of a new social gender system so as to facilitate common liberation and development of all genders.

Fourth, gender equality emphasizes free and notified choice of gender behaviors. Therefore, it believes that it is essential to expand alternatives for gender behaviors, increase

the degree of notification for free choice of gender behaviors, strengthen the capability for free choice in gender behavior, and construct a socio-cultural environment for choice of gender behavior.

Fifth, gender equality recognizes gender individuals' instrumental liberation and development. Take women as the nurturer of human resources for example. The liberation and development of human resources are those of gender; this is especially true for those of disadvantaged groups. However, gender equality places a stronger emphasis on self-liberation and development of subjects as individuals and individuals with gender. Therefore, the awakening, promotion and sensitization of self in individuals and individuals with gender are the foundation and prerequisite for practice of gender equality.

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The Symphony of Violence and Non-violence: Analysis of American Civil Rights Movement from 1950s to 1960s

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I. The Attitude towards Mr. King's Non-violence Movement

Generally speaking, the strategies of American Civil Rights Movement in mid-20th century are defined as non-violent direct actions by academics. However, this traditional view has been questioned by some American scholars in recent years who point out that there were many phenomena of violence and armed self-defense during the Civil Rights Movement. Meanwhile, the white racists who were against Civil Rights Movement used so many violent behaviors. Some scholars put forward that the myth of non-violence has created a kind of mode, that is, the victory of Civil Rights Movement is a top-down process, and the peaceful protests of black people have convinced the federal government to change the system with apparent racial discrimination. Non-violence has become a symbol for moral salvation of Americans. Peaceful petitions have touched Americans' consciences, and realized revolutionary social changes on the track of legal system and democracy. In fact, "that the segregation system succumbs to pressure shares the same degree of it succumbs to moral persuasion. From 1963 to 1965, violence and armed self-defense based on the form of street riots had played a fundamental role in eliminating the discriminatory isolation in economy and politics. After the violence and threats from black people show up, the legislation of the right of individuals had been put on the national agenda"[1] By analyzing the strategies of non-violent campaign and public opinions, and the interactive relations among policies of American Civil Rights Movement, this article corrects and enriches the understandings of American Non-violent Civil Rights Movement.

(I) The Rational Thinking of Non-violent Movement

Non-violent protests have some differences based on the level of intensity and confrontation. Some scholars have divided them into three categories:[2] (1) passive protests, meaning that people refuse to act like they acted in the past or as required by laws; (2) active

1. Lance Hill, The Deacons for Defencse: Armed Resistance and the Civil Rights Movement, John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 87.
2. Bo Wirmark, Nonviolent Methods and the American Civil Rights Movement: 1955-1965, *Journal of Peace Research*, Vol. 11, 1974, p. 115.

protests, meaning that people take unusual or uncustomary actions, even actions prohibited by laws and regulations; (3) mixture of active and passive protests.

It can be further divided into three groups: (1) non-violent protests refer to symbolic actions of discontenting some policy, law or behavior of the regime. It is beyond verbal and written protest, but basically a kind of expression of attitude and concept, even though it might be illegal in some cases. The types of non-violent protests include demonstrations and long-distance marches. (2) Non-cooperation refers to stop economic, political or social cooperation aiming at the opposed targets. The types of non-cooperation include strikes, off-attendance, withdraw from the organization, avoiding conscription and boycotts. (3) Non-violent intervention refers to intervening in the opposed targets in an active and planned way, which is the most radical actions that ignore the fact that laws and customs change the society. The types of non-violent intervention include occupying seats, and forcing opponents to declare for or against it.

Mr. King had relatively careful considerations and explanations about that. The reasons could be summed up as follows: 1. He firmly believed that fighting for the rights of black people was a just cause, and that justice prevailed over injustice did not need violence. 2. Non-violence reflected a kind of "Christian love." Applying to non-violence, which is consistent with Christian principles of faith, would easily mobilize people. 3. The Civil Rights Movement for black people would not only save black people, but also white people, Americans and even the mankind. That was why Mr. King had gained a high reputation during his lifetime and even after his death, and why Mr. King was commemorated by the United States government. He transcended the interests of black people and the United States. He changed the path from fighting for the rights of American citizens to human rights. 4. African Americans only accounted for 10% of the entire population of the United States. Therefore, black people could not achieve independence or autonomy in the United States or win by violence, which determined the 5th reason, which was black people must rely on the compassion, understanding and help from white people, and non-violence was just an effective way to arouse social and international opinions. 6. Violent repressions caused by non-violence could fully expose the atrocity and barbarism of racial discrimination and oppression. Meanwhile, it promoted measures and laws formulated by federal government and Supreme Court to maintain social stability.

Mr. King said to black people: "African-Americans only account for 10% of the entire population of the United States. If I say to you that black people should rely on their own strength to achieve libration, then I must be stupid. We have to pull our efforts together. No matter in Mississippi or any other places in the United States, we can not get the true freedom unless white people of the United States understand and compassionate our cause, and realize the black people are not the only victims of racial segregation, so are they. If I make

you think that black people can win the revolution by violence, then I must be misleading you. Even if just thinking of this solution is not realistic. Once the violent revolution erupts, many people may only end up being killed in vain."[1] "To launch a violent revolution, we are bound to be outnumbered. Once revolution ends, black people still face the same misery, still live in extreme poverty, and still can not enjoy their rights. Therefore, African-Americans have no other sensible choices in addition to non-violence based on practical considerations and moral senses."[2]

It should be noticed that Mr. King did not put forward his own slogans during the Civil Rights Movement which lasted over a decade and had a grand scale. When some radical black people came up with "black rights," he clearly expressed his dissents: "no one has ever heard of Jewish shouting loudly the slogan of 'Jewish rights' in public, but they have their rights. Jewish win their rights via their own unity, and consistent and creative efforts. So did Irish and Italian. They have never used the slogan of 'Irish rights' or 'Italian rights', while they won their rights by hard work. This is what we have to do." "To achieve these goals, we must depend on concrete actions, not just a slogan."[3]

Mr. King's faith towards the just cause of black people was based on the beliefs and ideas of freedom, equality and fraternity embodied in *Bible* and *United States Constitution*. He said: "What we are doing is not wrong. If we were wrong, then the Supreme Court of this country would be wrong. If we were wrong, then the Almighty God would be wrong. If we were wrong, then Jesus, the Nazarene, would just the utopian dreamer who comes from the future to the earth."[4]

(II) The Practical Strategies of Non-violent Movement

The Civil Rights Movement can be divided into two stages: it was basically the stage consisted of non-violent activities from 1954 to 1963. The activities of this stage included Montgomery Bus Boycott, students occupying seats in restaurants, Freedom rides. The Birmingham riots in 1963 saw the end of this stage. At the end of 1962, fighting for winning the conscience of white people could not be maintained in the South, and they did not make much progress in the North either. Some activists of Civil Rights Movement began to realize that the myth of non-violence was based on dangerously underestimating racism and misestimating the conscience of American people and democratic system. Civil Rights

1. Martin Luther King: *The Autobiography of Martin Luther King, Jr.* edited by Clayborne Carson, Jiangxi People's Publishing House, 2009, Page 290.
2. Martin Luther King: *The Autobiography of Martin Luther King, Jr.* edited by Clayborne Carson, Jiangxi People's Publishing House, 2009, Page 244-245.
3. Martin Luther King: *The Autobiography of Martin Luther King, Jr.* edited by Clayborne Carson, Jiangxi People's Publishing House, 2009, Page 291.
4. Martin Luther King: *The Autobiography of Martin Luther King, Jr.* edited by Clayborne Carson, Jiangxi People's Publishing House, 2009, Page 65.

Movement had entered a new stage after Birmingham riots which happened in May, 1963. The subsequent black protest movement carried the characteristics of violent self-defense. After Mr. King was assassinated in 1968, violent protest movements across the country saw the end of this new stage. During the actions of occupying seats in 1960, 3,600 people were arrested. However, during the seven months in 1963 (from April 1 to November 1), at least 14,733 people were arrested in the South, 200 cities involved.

On calling for civil rights legislation on June 11, 1963, President Kennedy said: "The upswing wave of discontent is threatening the social security." "The flame of frustration and discord is burning in each city. There are no legal constraints from north to south." People "get compensation from demonstrations, parades and protests on the street, which resulted in tensions, violent acts and threaten to life." The only way to rescue black people was on the street unless Congress took some actions. His intention was very clear: non-violence was becoming violence. The only way to stop protests and transfer the violence of black people was civil rights legislation.

Mr. King's mindset has also undergone changes. Mr. King's ideas became more radical from 1965 to 1968, which was the less researched period. It was during this period Mr. King's focus changed from civil rights of black people to human rights, from the racial segregation and the right to vote of black people to their economic rights, which showed the sublimation of his ideological level. The speech of "Beyond Vietnam" made by Mr. King showed his anti-war stand after his long-time hesitation, and his attitude of breaking with the Johnson's Government.

Mr. King summarized its strategies after one demonstration: 1. Non-violent demonstrators walked on the street to enforce their constitutional rights. 2. Racists stopped them by violence. 3. The conscience of American people would require intervention and legislation from federal government. 4. Under the pressure of public, government would take immediate interventions and subsequent remedial legislation.[1]

Amid the southern states of the United States at that time, racial segregation was "legitimate." The logic of racists was "to maintain law and order, you have to obey the social order, even though you knew it was unjust. If you have to protest, even in a non-violent way, we will retaliate with violence and condemn the fact that you stimulate me."[2] However, if black people do not fight for their rights, white people would say black people accept the status quo.

Black people who participated in Civil Rights Movement not only took many risks, including losing their lives, but also had to pay a high economic price because bailing out those who got arrested due to participating in activities needed a great deal of money. Many

1. James A. Colaiaco, Martin Luther King, Jr and the Paradox of Nonviolent Derict Action, John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 97.

participants who involved in many kinds of civil rights activities were well prepared for imprisonment; therefore, arranging bail was an important task for the organizers of civil rights activities. However, as the scale of the movement expanded and the fighting became sharper, the black power felt difficult to continue somehow. After all, the life of ordinary black family was difficult, and the organizers of civil rights activities must take this actual situation into account. Under the circumstances of minimizing the financial burden of black family, how could we maintain the sustainable development of Civil Rights Movement? One of Mr. King's colleagues made a bald proposal of letting middle school students participate in the movement. He said: "We are fighting for the next generation. So why not let our children participate in the movement?" Mr. King and other colleagues agreed this proposal after careful consideration. On May 2, 1963, hundreds of children gathered in the black church, and some of them were even less than 10 years old. Having watched the movie on how their fathers and brothers fought for civil rights, they sang their way to march in full swing. Soon they were put into the school bus and sent to prison. Encouraged by the heroic deeds of the children, many black people joined the demonstrations and went to prison calmly. This event drew attention of national media to Birmingham, which became a turning point of the development of Civil Rights Movement. In fact, black students, especially students from high schools and universities, had been always an important force in Civil Rights Movement.

King's chief assistant Wyatt Tee Walker said: "We must bargain with a crisis. There is no way that we can get help from the white in a moderate way. They will crucify you.… You have to cause a crisis."[1] Some scholars noticed that the rights of black people made progress after the non-violent direct acts and the crisis. Therefore, "crisis politics is one of the most important parts of black people's political experience."[2] Mr. King also warned the government: "If their (black people) suppressed emotions can not be released in the non-violent channel, then they will be released by means of ominous violence. It is not a threat, but a historical fact."[3] Historian Zinn also admitted that civil rights were often won by violence. However, he thought the degree of violence triggered by protests was negligible compared to the justice won by protests.[4]

The goals and requirements of Civil Rights Movement have also undergone changes, and the forms and means of fighting have respectively undergone changes as well. At first, the

1. James A. Colaiaco, Martin Luther King, Jr and the Paradox of Nonviolent Derict Action, John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 101.
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goal of Civil Rights Movement was to break down the isolation of public facilities, as well as demand freedom of speech and freedom of assembly. Having achieved these two goals more or less, Civil Rights Movement demanded for voter registration and employment for black people. During the mid-1960s, Civil Rights Movement demanded for basic economic and social reform, not only for the sake of black people, but also for all the poor people.

In a word, Mr. King's non-violent Civil Rights Movement had solid theoretical, ideological and moral foundations, and his strategies and means were based on the clear understandings of reality.

II. Non-violence and Violence, Integration and Separation: the Symphony and Variations of Civil Rights Movement

Malcolm X (May 19, 1925-Februrary 21, 1965) was also a black leader of King's period. He was assassinated at the age of 39, so did Mr. King. X advocated the independence of black people, the prohibition of racial intermarriage, and the establishment of black people's schools, enterprises and stores. He was the representative of Black Nationalism in the 1960s.

These two people represented the two poles of Civil Rights Movement, and two different kinds of traditions of fighting for black rights. Mr. King belonged to integrationism, while X belonged to separatism and nationalism. Mr. King was a Christian pastor, while X Muslim. Mr. King adapted non-violence, while X combined violence with armed self-defense. Mr. King was in the South, while X was in the North. Mr. King went for mild reforms, while X for radical revolution. Mr. King, who had a light black skin, gained formal higher education and fought for the rights of middle class; while X, who had a dark black skin, was a emancipator from reeducation, became educational through self-learning and fought for the rights of working class.

For both traditions, Du Bois expressed accurately: "Who am I exactly? Am I an American or a black? Can't I be both?" Optimists and integrationist said "yes" to this question. They thought, under the same Christian and American values of freedom and democracy, it was possible for them to be a black and an American at the same time. As long as the contradictions of American values and racial contradictions were fully revealed, Americans would grant the same treatment to black people. The theory of optimists was not only based on American belief, but also Christian belief. They believed white people would treat them equally before God. Black pastors had fully elaborated this point. They thought that Christian is the gospel of justice and love. Believers should treat all people with justice and love, like brothers and sisters. God creates all, and Jesus dies for all; therefore, the only option for Christians was to create an equal society for black and white people.

Separatists and nationalists gave the "no" answer to that question. They thought they could not be both. The United States and white people did not care about black people. Black

people should either go back to Africa or find another place to live at under the African history and cultural traditions.

The two kinds of traditions could not be absolutely separated. They experienced the period of wane and wax during different times. Even the same person had different reactions when facing at different situations. Kwame Toure (1941-1998, whose American name was Stockely Carmichael) took charge of Student Nonviolent Coordinating Committee. He was integrationist in 1960s, then became separatists, and joined the Black Panther Party. "If our requirements can not be fulfilled, then peace is impossible."[1] Eventually, he migrated to Guinea, and died in 1999.

(I) Non-violent Integrationists

Since the founding of the United States, integrationists were the majority and the mainstream of black rights movement, such as F. Douglas from National Association for the Advancement of Colored People (NAACP). Douglas said: "It is totally absurd to talk about letting 8 million Americans migrate from their homes in the U.S. to Africa." "The fate of colored Americans is the fate of the United States. We will never leave you.… We are here.… It is ridiculous and funny to imagine that we are going to be removed. This is our country. For philosophers and statesmen of this country, here is the issue: what kind of principle should be the guiding policy of this country to treat us?"[2]

Douglas was a pious Christian, whose political philosophy was strongly marked by religion. He believed that God shall punish those who have taken evil actions. As he was not satisfied with the compromises made by the *United States Constitution* on the issue of slavery, he once fiercely attacked and even burned up the *United States Constitution*. However, when John·Brown tried to resolve the issue of slavery by violence, Douglas suggested to apply the spirit of Christian to influence slave owners first, and he did not participate in Brown's riot. But he did not object to resolve the issue of slavery by legitimate violence. After Civil War broke out, he actively supported it as a way to end slavery, and sent his two sons to the frontline.

F. Douglas experienced peaks and valleys, but did not lose the love to the United States and the ideal that black people would achieve freedom eventually in the United States. In 1865, he said: "I expect to see colored people of this country will enjoy the same freedom (as that of white people), I expect to see colored people of this country will go to the same polling station to vote.… I expect to see colored people of this country will go to the same school. I expect to see colored people of this country will go to the same church. I expect

1. J.U. Gordon, Black Males in the Civil Rights Movement, *American Academy of Political and Social Scienc*e, May, 2000, p. 53.

2. James H. Cone, Martin and Malcolm and America: A Dream or a Nightmare? John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 119.

to see colored people of this country will take the same bus. I expect to see colored people of this country will seat in the same coach.… We should be proud of the same country. We should fight with the same foes. We should enjoy the same peace and all the benefits of this country."[1] His expectations and Mr. King's dreams typically reflected the traditions of integrationists.

After Douglas, B. T. Washington became the main spokesperson for black mainstream thinking. In his view, black people should be economic self-reliance, improve educational and moral standards and create good social images at first. Only in this way could black people win respect from white people. Then it was a natural thing for black people to get political and civil rights. He disapproved the main objectives of the struggles of black people during the late 1890s and the early part of the 20th century. He encouraged black people to strike out of themselves, overcome their own laziness and bad habits, master some professional skill to make a living, and become rich through thrifty and diligence. He told black people: "No nation ultimately stands up without arduous and repeated struggles." "If one nation has no contributions to the international community, it will be long-term excluded by international community from any perspective." Only when black people achieved economic self-reliance, they could "enforce civil and political rights" in the true sense. Some Chinese scholars believed "even though the political views and stands of Washington sacrificed the right to political participation and social equality in the short term, his ultimate goal was to achieve the overall political and social equality by means of improving economic power in the long run."[1]

Du Bois (1868-1963) was the leader of black movement with a Harvard PhD. He once said: "What do we want? What are we pursuing? … The answer is quite clear and beyond doubt, that is, we want to be Americans, full-fledged Americans. We want to possess all the rights that are enjoyed by other American citizens." We wanted to be "great Americans" and "great black people" at the same time. However, Du Bois joined the American Communist Party in 1961. He accepted the invitation of the President of Ghana, migrated to Ghana and joined Ghana nationality at the same year. Of course, Du Bois did not achieve the unity of the two identities on his deathbed.

Mr. King became the symbol of faith in the United States. Martin·Luther·King said lively about American faith in his speech *I Have a Dream* in 1963. He said: "When the architects of our republic wrote the magnificent words of the *Constitution* and the *Declaration of Independence*, they were signing a promissory note to which every American was to fall heir." However, "it is obvious today that America has defaulted on this promissory note insofar as her citizens of color are concerned." And now "we have come to our capital to

1. Wang Enming: *American Black Leaders and Researches on their Political Thoughts*, Shanghai Foreign Language Education Press, 2006, Page 87.

cash this check."[1]

Mr. King's speech *I Have a Dream* was cited most. But others ignored the words he said from 1966 to his death. He said: "the dream that I describe in Washington back to 1963 always becomes a nightmare."[2] The story of the last two and half years of Mr. King was ignored. Moreover, Mr. King's objectives were not just to let black people equally integrate into American society. He stressed, "let us not think this way, as our movement is just to seek an approach for black people to integrate into all the existing values of American society."[3] Mr. King said: "right now we must resolve the class problem, i.e., the oppression of related privileged class over non-privileged class… We are saying that something is wrong within our economic system and capitalism… There must be a better distribution of wealth and maybe America must move toward a Democratic Socialism." "Now we call attention of the entire society on some fundamental problems… We must realize the evils of racism, economic exploitation and militarism are all tied together. We can not eradicate one without eradicating others… The whole structure of Americans' life must be changed."[4] Three weeks before his death, Mr. King said, "the amount of white people who cherish the principles of democracy over privileges is not enough in our country." "In fact, American diseases are much worse than that of I have realized when I first join this cause in 1955." "The real problem faced by the Movement is the radical reconstruction of the society itself."[5]

Mr. King was not always an optimist. He even said to black people and his colleagues, "Most white people in America are racists who treat the slums of black people as 'internal colonies'." He told his colleagues not to be afraid of the word "socialism."[6] His last unfinished plan – "Poor People's Movement" showed that he had gone beyond the issue of race but focused his attention on wealth issue. Before his headed out to Memphis in support of the strike of sanitation workers, he said to one reporter, "In a sense, you can say that we engage in class struggle. That is it."[7]

(II) Separatists of Nationalism

Black Nationalism thought in the past and present that black people were Africans first,

1. He Huaihong: *Western Tradition of Civil Disobedience*, Jilin People's Publishing House, 2001, Page 111.
2. David J. Garrow, From Reformer to Revolutionary, John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 183.
3. David J. Garrow, From Reformer to Revolutionary, John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 183.
4. David J. Garrow, From Reformer to Revolutionary, John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 179.
5. David J. Garrow, From Reformer to Revolutionary, John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 180.
6. Adam Fairclough, Was Martin Luther King a Marxist? John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 187.
7. Adam Fairclough, Was Martin Luther King a Marxist? John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 191.

not Americans. They did not resort to the *Declaration of Independence*, *Constitution* and *Lincoln Emancipation Proclamation*, and even not mentioned Christianity. They identified themselves as Africans to oppose the United States, and set goals of establishing a society for black people based on African traditions and culture. Martin Delany was deemed as the father of Black Nationalism. He claimed, "no one is blacker than him." Douglas, as a typical integrationist, said "I thank God for making me a human." However, "Martin Delany always thanks God for making him black."[1] In view of nationalism, like David Walker said in 1829, "white Americans are our natural enemies." "We treat their actions as demon's other than human's." "White people are always creatures of unjust, jealous, cruel, greedy and bloody, and always seek power and authority."[2]

National Separatism in the United States showed the mood of disappointments, and the living experience of lower classes. Black people suffered from the oppression of white people, so they did not believe that white people would accept them equally. They showed their hatred in their languages, and had a sense of national pride. Martin Delany said, "I have no hope in this country and no faith in Americans."[3] Black people could not get freedom via integration, but separation and autonomy, which meant that black people had to migrate to somewhere in Africa or Latin America. The ups and downs of nationalism were related to domestic situations. The power became stronger when racists were rampant, and it became weaker when racists were mild. During the period of Civil War and Reconstruction, even Martin Delany did not mention the issue of immigration. He participated in the political process, and also wanted to campaign the Lieutenant Governor of South Carolina.[4] However, the hope of black people was soon shattered. With the reconstruction over, federal troops were withdrawn and the former slave owners made a comeback again.

Black Bishop Henry McNeal Turner and Marcus Garvey propagandized separation during the low tide of Black Power, which exerted a huge impact on X. When the Supreme Court announced in 1883 that the *Civil Rights Act* in 1875 violated the *Constitution*, Mr. Turner regarded it as "barbaric decision" collapsed the black people's loyalty towards the United States. He said: "if this verdict was right, then the *United States Constitution* would be a piece of dirty cloth, a fraud and a lie. And all black people of this country can spit on it." Under the circumstances of despair, he became the firm advocator who supported to return to Africa. He

1. James H. Cone, Martin and Malcolm and America: A Dream or a Nightmare? John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 122.
2. James H. Cone, Martin and Malcolm and America: A Dream or a Nightmare? John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 123.
3. James H. Cone, Martin and Malcolm and America: A Dream or a Nightmare? John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 123.
4. James H. Cone, Martin and Malcolm and America: A Dream or a Nightmare? John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 124.

said, "I believe, we will return to Africa eventually, just as we believe God exists."[1] Once, the leaders of African Methodist Episcopal (AME) discussed that since white and black people recognized the God as European appearance, whether should they change their church names from African to American? Mr. Turner announced "God is black"[2] which shocked everyone.

Another black leader Garvey was from Jamaica. He had traveled to Central America and Europe, and seen the phenomena that black people were oppressed around the world. He lamented: "Where is the government of black people? Where is the king and kingdom of black people? Where are the president, country, ambassadors, army and navy of black people? Where are the black people who take charge of major events?" Since there were no such black people, then he claimed that "I will help you create them." He thought the pride and confidence of black people should be slightly encouraged. "Stand up, you are a great race, and you can achieve anything you want."[3]

As white people had occupied Europe and America; therefore, black people had to manage Africa. In 1920, Garvey held the First World Black International Congress in New York, with the attendance of 25,000 people. The theme of the conference was to 'Make Africa Africans'. No one is more radical than Garvey on criticizing integrationism. He believed "no one will do more for yourself than you do." Relying on white people meant that black people could not do their own business on their own, which created the phenomenon that black people were inferior to others. Therefore, integrationism was a philosophy of self-denial. Du Bois, who was the editor of *Crisis* of NAACP at that time, was always criticized by Garvey. Garvey was the founder of Universal Negro Improvement Association (UNIA). In 1920, it claimed that it had four million members, and reached to six million members in the following year. Although most scholars believed that the figures were exaggerated, no one denied that he founded the largest and the most successful black organization in American history. American government felt threatened by Garvey's reputation. With the help of black leaders of integrationism, American government accused him of mail fraud. He was sentenced and deported from the United States.[4]

Besides Garvey, there were another two movements, which were influential to nationalism, influenced X. One was Moorish Science Temple founded by Noble Drew Ali (die from assassination), the other was Nation of Islam founded by Wallace D. Muslims

1. James H. Cone, Martin and Malcolm and America: A Dream or a Nightmare? John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 124.
2. James H. Cone, Martin and Malcolm and America: A Dream or a Nightmare? John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 125.
3. James H. Cone, Martin and Malcolm and America: A Dream or a Nightmare? John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 125.
4. James H. Cone, Martin and Malcolm and America: A Dream or a Nightmare? John A. Kirk, ed., *Martin Luther King, Jr. and the Civil Rights Movement: Controversies and Debates*, Palgrave Macmillan, 2007, p. 126.

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and the subsequent leader Elijiah Poole. Both movements refused to Christianity and white people, but affirmed Islam and Africa-Asian identity. The religious coloring of both movements was stronger than the political coloring of Garvey's movement. Both of them thought that white people were inherently vicious. X said, "The biggest crime committed by white people was to cultivate black people to hate themselves."

III. The Roles of American Federal Government

There was no doubt that throughout the history of black people fighting for their equal rights, the roles of the federal government could not be ignored, including the President, Parliament and the Supreme Court. The question was under what circumstances, the government stood in the position of concerning about issues of black people and protecting their civil rights.

Studies have shown that Presidents of the United States, such as Dwight Eisenhower, John F. Kennedy etc., who had outstanding performances in Black Civil Rights Movement, did not attach importance to the issue of racial discrimination at first. Even the fact that they protected civil rights of black people was not based on the morality of human rights, but on a comprehensively political thinking.

About the verdict of Brown Act, Eisenhower publicly said that the verdict should be enforced as the *Constitution* required; however, he said in private that the decision was a serious mistake, and the Brown Act would "let the progress of the South retrogress at least 15 years… People are very emotional on this issue, especially when children are involved… Those, who try to tell me that we can deal with these things by force, are idiots." He thought it was inevitable to abolish racial discrimination, but it had to adapt to a gradual process, from the highest rung of education to lower. He criticized extremists on both sides, and said, "You can not simply use law to change people's minds."[1] Eisenhower thought that the federal government should not intervene in such sensitive social issues, and had no right to interfere in the issue of education which was under the jurisdiction of states and local governments. However, some places in the South showed dangerous signals of violence tendency and states' power challenging federal power. Under the circumstances of armed forces of states losing control, he must stop the race riots in the South to maintain the authority of federal government and the *Constitution*, as well as social order. He could not tolerate the behavior that a governor openly challenged the authority of the Supreme Court and the federal government. On September 24, 1957, President Eisenhower dispatched 1,200 paratroopers from 101 Airborne Division and quelled the Little Rock Incident whose purpose was to prevent black students from enrolling in schools by violence, which was connived and

1. B.J. Dierenfield, *The Civil Rights Movement*, Pearson Education Limited, 2004, p. 23.

supported by the Governor and National Guard of Arkansas.

The Kennedy Administration paid great attention to the information of public opinion poll, and adjusted policies in accordance with its trends. In public opinion polls, people from different regions showed different attitudes to Civil Rights Movement, and the concern and support of northern people was clearly higher than that of southern people. Kennedy was very careful to respond to these differences, but did not pay attention to Civil Rights Movement, and tried to avoid making a clear position on Civil Rights Movement in public. When he had to comment on Civil Rights Movement during the election campaign, he just showed support to Civil Rights Movement based on the *Constitution*, but avoided making moral or emotional judgments. During the period of Kennedy becoming the Democratic presidential candidate to the end of the election campaign, there were two things that could show his attitude towards Civil Rights Movement. The first one was that there were three policies involved in civil rights in his 81 campaign promises. The other was he called Mrs. King to comfort her and promised to mediate with the concerned parties after Mr. King was arrested in October 1960.[1] It was just two weeks away from the election, and he made the call as a campaign strategy. This call made his win vigorously support from black voters. Mr. King's father who originally supported Republican Party openly changed his position. During Kennedy's presidency, only the respondents of public opinion polls in September 1963, who believed civil rights were the foremost issue among civil rights, economy and diplomacy, took up the biggest proportion among the records of thirteen opinion polls, accounting for 48.3% of the respondents. The average percentage of other polls about this issue was far less than 10%. There were only 3.8% of the respondents, who believed civil rights were the foremost issue in March 1963. The least percentage of the respondents who thought diplomacy was the foremost was 24.5%.[2] It meant that although racial discrimination was serious, the populace did not pay much attention on black issues. The reason caused the most social concern was that Civil Rights Movement changed from non-violence to violence in the summer of 1963, which was exactly what some scholars had thought. The attitude and orientation of public opinion were closely related to policies of Civil Rights Movement made by the government, which was the reason why Mr. King and others promoted social reforms via social crises.

IV. The Attitude towards the Development Mode of Civil Rights of African-Americans

African-American Civil Rights Movement in 1950s and 1960s was neither a revolution, i.e., a revolution on a usual concept that overthrew the government and major social institutions from the bottom up, nor a social reform from top to bottom like Progressive

1. Daniel Stevens, Public Opinion and Public Policy: The Case of Kennedy and Civil Rights, Presidential Studies Quarterly, Vol. 32, No. 1 (Mar. 2002).

Movement or Roosevelt's New Deal; while it was a social protest movement with the purpose of fighting for constitutional rights of citizens. It was under the leadership of middle class of black people, and its main bodies are grass-roots populace organizations based on black churches and communities. The movement won support from all the progressive forces in American society. Eventually civil rights of black people were established and protected in legal form, which continued the American progressive traditions reflected in *Declaration of Independence* and the *United States Constitution*.

Violence was a controversial and sensitive topic. An American historian pointed out that Americans preferred to believe that changes were peaceful and orderly, and each generation could learn from past experiences. They also worried about young people not learning right experiences from history. For instance, talking about the violent factors during the process of Civil Rights Movement might mislead young people and make them believe that it was a violent era, and a period of ones enforcing their own laws. In the ideal American belief, rational speeches and moral exhortations could solve all the problems, but this was not the history of Civil Rights Movement.

Before Mr. King, the primary way of the most organized black rights movement was to go to law, represented by National Association for the Advancement of Colored People (NAACP). Since the organization was established in 1909, it applied various means to fight for black rights, including public education, legislative lobbies and court activities. It hoped to gradually weaken the legal basis of racial segregation through cases. However, law was not everything. In 1954, the verdict of Brown Act did not resolve the issue of southern segregation, but stirred up the resistance from South. On March 12, 1956, 101 southern Congressmen signed *Southern Declaration* to condemn that the verdict of Brown Act "had violated the existing laws and constitution," and urged the states where the Congressmen came from to "undo the verdict by all lawful means." Little Rock Incident and University of Mississippi Incident fully proved Tocqueville's prophecy, which was "law can abolish slavery, but only Gold can erase the traces of slavery." "Modern people have to get rid of three stubborn prejudices which are more difficult to handle than slavery after the abolition of slavery. These three stubborn prejudices are prejudices of slave owners, race and complexion."[1]

Today, we not only admit that African-Americans have achieved great accomplishments during the process of fighting for their own rights, but also should realize that it is a very difficult and long historic process to achieve racial harmony and social justice. The United States has a long way to go in this regard.

Conclusions and Reflections

There are profound and complex backgrounds and reasons why the non-violent mode

1. Tocqueville: *Democracy in America* (the first volume), translated by Dong Guoliang, The Commercial Press, 1996, Page 298.

of American Civil Rights Movement and Mr. King was shaped into idols of the American Dream:

First, American beliefs represented by *Declaration of Independence*, the *United States Constitution* and constitutional amendments are the important political and legal prerequisites for the success of Mr. King and Black Civil Rights Movement. Meanwhile, it is because of this basis that non-violent campaign can achieve the positive results and Mr. King can realize his dream.

Second, black Christian churches are Mr. King's spiritual and organizational support. Even if Mr. King's non-violent movement was declared illegal, a great number of black people who were sent to jail and public opinions thought that they represented moral and justice, while the law was unjust. If there were no black Christian churches and other civil society groups as a link, it would be impossible for black people to launch the social movement on such a scale.

Third, the media are relatively independent. If there were no reports from media, then Mr. King's non-violent strategies would be undermined or even not be achieved. Media reports caused much pressure on American government at home and abroad.

Fourth, the U.S. mainstream society wisely recognizes the value of social reforms. Reforms are essential forces of sustainable development for a society, and the only choice for a society to avoid social revolutions. Therefore, they need the spirit of Mr. King's non-violent resistance as the idol of social reforms, and actively elucidate the positive significance from Mr. King's thoughts to serve for reality. In 1994, the then U.S. President Bill Clinton signed *Martin Luther King Day and Service Act*, and decreed that day as Community Service Day, Racial Cooperation Day and Youth Anti-violence Day.

Fifth, the scale and level of commemorative activities of Mr. King in the United States is not second to that of any U.S. president, which shows their intelligence on changing historical lessons to the development forces for present and future. Mr. King's death was a dark symbol of American society, but becomes a business card for American values and dreams.

Sixth, the last question which is worthy of further reflection is: if citizens exercising their constitutional rights may cause violence, then should their rights be banned? Or should citizens give up the right to protest just because it may threaten social order? What all Mr. King has asked was constitutional rights. He did not want to destroy the social system, but wanted to make it more reasonable. Therefore, when they protested unjust laws, they were prepared to be punished by law. If we think this kind of protests is one of the forces of social development, then whether a rational society should leave space for citizens to hold non-violent protests or not.

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The Legal System of Protecting the Rights and Interests of the Peacekeeping Police: Reflection and Restructuring

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Traditional human rights theories, view police as the opposite of human rights that should be restrained, emphasizing standardizing their executive power and neglecting their demands for human rights. The rights of the police are almost forgotten, while the protection of their rights and interests is necessary for the legal progress of the society. On the one hand, such social phenomena as confronting against laws violently and neglecting the fundamental rights of the police still exist widely; on the other hand, legislative concern and frontier research in this area are insufficient, especially for the protection of the rights and interests of the peacekeeping police. However, the situation for the peacekeeping police is increasingly complicated and their tasks are more arduous. The risk of their rights and interests in such situation is more serious than that of the domestic police. It is nothing new for the occurrences of mutilations and deaths of peacekeeping persons in peacekeeping operations due to car-crashes, diseases and armed conflicts. The death of Chinese peacekeeping police in Haiti in 2010 has called for the concern on the protection of the rights and interests of the peacekeeping police, which becomes the spotlight of the frontline people and scholars. Starting with the scope of the protection of the rights and interests of the police, the authors analyze the relevant domestic and foreign laws and make some recommendations on reflections and restructuring of the legal system on the basis of presenting the current situation of protecting the rights and interests of the peacekeeping police combined with relevant legal analysis as the theoretical foundation.

I. Theoretical Dispute of the Scope of the Protection of the Rights and Interests of the Police

"The rights and interests of the police" is not a legal term in strict sense, and it should be a combination of the statutory rights and the rights endowed by internal regulations.[1] Therefore, there are theoretical divergences defining the scope of the rights and interests of the police.

1. ZHOU Zhongwei & LI Xiaoqiang, *Legal Protection of the police rights and interests* [J], *Academic Journal of Chinese People's Public Security University*, 2003, (4).

According to some theories, the rights and interests of the police include not only the rights to enforce the law, but also the rights should be enjoyed by the police as citizens. In this sense, the scope of the protection of the rights and interests of the police is very extensive. In other words, their rights and interests should not only include those when he/she performs as an executive for national power, but also those that he/she enjoys as a citizen.[1] Furthermore, the experts hold the same view for the category still varies in the specific institutional design. For instance, Xiang Gongyan, an expert in this field, widens and deepens the category for police protection executively. He holds the view that the protection should extend the time from when the police are performing its official duties to the time afterwards. Not only the police themselves, but their families and relatives should also be protected.[2]

On the other hand, some experts believed that the police protection should only include the protection for law enforcement rather than his legal protection as citizens. This view holds that the interests and rights of the police for law enforcement are defined as the collective rights and interests when the national civil police (NCP) perform law enforcement, which include the inviolability of life and personal security; the inviolability of human dignity; the intactness of law enforcement facilities and equipment; protection of false accusation, circumvention, and retaliation after the law enforcement for the police themselves and their relatives. It is necessary to distinguish the interests and rights of law enforcement as police from those citizens. The police interests and rights during law enforcement should be highlighted, rather than his individual rights and interests.[3] Besides, the category for police protection is confined to some privileged rights and interests during and after the course when the police perform their official duties, which at the same time draws different from the collective rights and interests as Public Security Organs and the police. In other words, the category for protection is confined to the individual police himself.

In line with the former view, the authors believe that such view could conclude the violation for police protection with a wider coverage due to the lack of theoretical basis of current protection situation for domestic police and the pervasive overlook for police protection. Hence, this view could serve as an effective protection for the police. Furthermore, this is of paramount importance to the peacekeeping police, who work in a more risky, complicated, and isolated environment with increasingly acute and sensitive social conflicts. The situation there further compounds difficulties for institutional and legal adjustment, and therefore it is necessary to establish an extensive and comprehensive system

1. MAO Ruiming, *Tentative Analysis of law enforcement rights and interests protection of the Police* [J], *Academic Journal of Jiangxi Public Security Colleg*e, 2004, (4).

2. XIANG Gongyan, *Investigation and Reflections on the Police legitimate rights and interests protection* [J], *Policing Studies*, 2005, (11).

3. AN Ling, *Law Enforcement and Rights Protection: Making Full use of Legal Weapons* [N], *People's Public Security News*, 2005-12-14.

for rights and interests protection. Thus this is the very reason why the authors identify with the former view.

Concretely speaking, legal rights and interests protection for the peacekeeping police is approached from the following two dimensions: internationally and domestically. From a macro perspective, the international law covers the main area for police rights and interests protection which is in line with the authors: the protection for law enforcement and the protection as an individual citizen. The domestic law mainly concentrates on the individual protection for the police. Due to the subjectivity to the adjustments to the international law, UN documents and the law of residence countries where Chinese peacekeeping police are accredited, domestic laws in terms of legal protection for rights and interests revolve around the legitimacy of peacekeeping action, education and training, salary and privilege, preferential treatment, etc. The authors will further elaborate the legal construction of the peacekeeping police protection from the perspective of international and domestic laws.

II. Rights and Interests Protection for the Peacekeeping Police from the Perspective of International Laws

Protection for peacekeeping police internationally is stipulated in a series of human rights related UN treaties, International humanitarian laws, UN documents and conventions on human rights, and regional documents framed by the *UN charter* with the international bill of human rights at its backbone, which include *Universal Declaration of Human Rights, International Covenant on Civil* and *Political Rights* and its *Optional Protocols* and *International Covenant on Economic, Social, and Cultural Rights*. Among all the instruments, *Convention on the Safety of UN and the associated personnel, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Code of Conduct for Law Enforcement Officials*, *Principles for War Engagement of UN* are of significant importance to the rights and interests protection for the peacekeeping police. This paper would further elaborate on it from the perspective of international laws in the following dimensions:

1. Focusing on common human rights while concerning about the rights and interests protection of the police

Concerns about the human rights in the international community have never been on the wane. As human rights treaties constitute an important part in the international treaties, intensive attention has been paid to the basic civil rights and to the rights of the disadvantaged group. The legal protection for human rights is stipulated in a series of human rights related UN treaties, International Humanitarian Laws, UN documents and conventions on human rights, and regional documents with the international human rights charter at its backbone, which include *Universal Declaration of Human Rights, International Covenant on Civil* and *Political Rights* and its *Optional Protocols, International Covenant*

on Economic, Social and Cultural Rights. Peacekeeping police, above all, are citizens. It is legitimate for them to receive basic civil protection from the international human rights system. Yet, it is known that the identity of the peacekeeping police is multiple, which in turn defines particularity of their rights and interests protection. Peacekeeping police, under the leadership and command of Chief Inspector, perform maintaining and restoring peace mission authorized by the UN, so they should be given a noncombatant status even if they are with firearms and receive corresponding protection of the international law. Besides being policemen, peacekeeping police function as peacekeeper. Therefore they embody multi-identities including police, citizen, labor, executive for law enforcement authorized by the UN and non-combatant from the perspective of international law of armed conflict. It is natural that the recognition of traditional human rights theories determines the legislative design. Human rights covenants are designated to restrict the executive power of the police, standardize their behavior, with protection of the legitimate interests and rights of the citizen against the police playing the front. Hence, rights and interests of the police are the shadowed rights and interests enfolded by the national power and UN authority. Apart from the *Universal Declaration of Human Right*s (three human rights covenants and the *Optional Protocol*), all covenants are designed to protect the basic human rights of an individual and the human rights of the disadvantaged group without particular regard to the rights and interests of the peacekeeping police which include *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)* and its *Optional Protocol, Convention on the Rights of the Child (CRC)* and its *Optional Protocol*, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and its *Optional Protocol, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), Rome Statute of the International Criminal Court, Geneva Convention* and its *Optional Protocol*. Moreover, other UN human rights instruments and conventions related to legislation[1] are designed to directly restrict the police

1. The human rights instruments relating to justice are as follows. *Standard Minimum Rules for the Treatment of Prisoners*, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, *Basic Principles for the Treatment of Prisoners*, *United Nations Guidelines for the Prevention of Juvenile Delinquency*, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, *Declaration on the Elimination of Violence against Women*, United Nations Standard Minimum Rules for Non-custodial Measures, *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, *Declaration on the Protection of All Persons from Enforced Disappearance*, *Safeguards guaranteeing protection of the rights of those facing the death penalty*, *Code of Conduct for Law Enforcement Officials*, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, *Basic Principles on the Role of Lawyers*, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, etc.

power, standardize their behavior during the course of law enforcement, with an attendant protective aim for the police. Only few of the documents draw attention in this regard, one of which is *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (Hereinafter referred to as PRINCIPLES). "PRINCIPLES" calls for immediate concerns to protection of police rights and interests, by stipulating that police perform an extremely important social duty, hence it is necessary to maintain and improve their working conditions and status if need arises. Considering the high risk in law enforcement, threats to the life and security of law enforcement personnel are detrimental to the social stability. Stipulating the strict implementation of the use of force and firearm, PRINCIPLES also makes it clear that it is necessary to care for the individual safety of the police. It is an obligation also to protect the safety, freedom and life of the police. Furthermore, it proposes cases for necessary self-defense when force and firearm are used. All the above are the legitimate protection for the police.

2. Particular protection of the peacekeeping police's rights and interests

Related legal documents to the protection of the peacekeeping police's rights and interests are listed below: *Convention on the Safety of the United Nations and Associated Personnel, Principles for War Engagement in Peacekeeping Operations, Guiding Principles of Peace Keeping Operations, Guide to the Death and Mutilation Claims*.

Considering the increasing deliberate attacks on UN officials and associated personnel and the lack of measures for protection, the UN Assembly approved the *Convention on the Safety of the United Nations and Associated Personnel* (hereinafter referred to as CONVENTION) on Dec. 15th, 1994 with a purpose to crash down attacks and other forms of maltreatment of personnel in the name of UN and to improve the efficiency as well as the security of peacekeeping operations. This CONVENTION came into effect in January 1999. The CONVENTION clearly identifies a series of basic categories include "UN personnel," "concerned personnel," "UN operations," "host state" and "Transit State." Peacekeeping police are categorized in the UN personnel[1], within the protection of CONVENTION. Besides, CONVENTION states member States countries have the obligation to protect the security of UN personnel and its associated personnel and the obligation to prevent any crime targeted to UN personnel and its associated personnel. Moreover, CONVENTION specifies crimes, and the administration, prosecution, extradition, dispute resolution and mutual legal assistance in criminal matters of the crime as well as the fair treatment of the suspect. It is safe to say that CONVENTION is a relatively detailed and comprehensive elaboration for the

1. See Article 1 of the *Convention on the Safety of United Nations and Associated Personnel*, "United Nations personnel" means: (i) Persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation; (ii) Other officials and experts on mission of the United Nations or its specialized agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a United Nations operation is being conducted.

protection of the UN personnel.

What is the most noteworthy is the stipulation of Article 8 of the CONVENTION: Pending their release such personnel shall be treaded in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Convention (1949), which properly resolve the matter of humanitarian treatment of the peacekeeping personnel, at the same time, approve the application of the law of the armed conflict on peacekeeping operations. UN Secretary General in 1999 issued *Abidance by the International Humanitarian Law for the UN forces,* requiring UN forces to adopt a humanitarian approach for the citizens and conflict parties. In order to prevent the impact on the nature of peacekeeping operations after the issue, article 2 of this notice highlights that: the protective status for peacekeeping personnel as non-combatants remains unchanged after this issue. It further reiterates the paramount importance of rights and interests protection for peacekeeping personnel as non-combatants. In light of the stipulation of Geneva Convention, non-combatants enjoy the basic humanitarian treatment, not subject to unprovoked armed attacks. Peacekeeping and antiriot police, standing in between peacekeeping force and peacekeeping police are institutional, mobile armed force, under the leadership and command of the UN peacekeeping chief police inspector. During the course of peacekeeping and antiriot, it is essential to recognize their legal status in order to comprehensively protect their rights and interests.

As for the case of privilege and immunity for the peacekeeping operations, there's no clear statement in the *Convention on the Privileges and Immunities of the United Nations (1946)* and the *Convention on the Privileges and Immunities of Professional Bodies in the United Nations (1947)* because they were drafted rather early. Yet, through peacekeeping operations afterwards, peacekeeping operations are considered as "experts on mission for the United Nations," as stipulated in the article 6 of the *Convention on the Privileges and Immunities of the United Nations (1946).* Besides, article 4 of the Convention states about agreements on the status of the operation, that is: The host State and the United Nations shall conclude as soon as possible agreement on the statue of the United Nations operation and all personnel engaged in the operation including inter alia, provisions on privilege and immunities for military and police components of the operation. This statement hence indirectly recognizes the privileges and immunities of the peacekeeping police during their operations.

Principles for War Engagement in Peacekeeping Operations is another document closely related to the rights and interests protection for peacekeeping police. In line with *The Law of Armed Conflict*, *International Humanitarian Law* and UN Security Council resolutions, *"Principles for War Engagement in Peacekeeping Operations"* is drafted with a target to specific peacekeeping operations, serving as the unique operation guiding principles and legal basis for the peacekeeping mission and response to threats of violence.

This document specifies the extent and approach to the use of force, ensuring the police clear about their privileges and restrictions as well as the measure and legal consequence of the use of force, legitimizing and enhancing control for the use of arm during the operation. As for the cases of using force, self-defense takes the priority in the principles, ensuring their rights for self-defense. Considering the immediacy, risk and irretrievability of using force, preemptive self-defense is adopted for the potential violent crime (with enough obligatory evidence for potential immediate attacks). These all embody the protection for life and health of peacekeeping police and the authorized power by the UN.

Targeted to specific UN peacekeeping missions, *Guiding Principles for UN Peacekeeping* are very comprehensive and detailed, involving the operation organization, mission setting, duties, training, administration and logistics guidance, the latter two of which are the most important and closely related to the rights and interests protection for peacekeeping police. It clearly specifies operation equipment, medical support, individual luggage management, communication, transportation, social benefits, entertainment, holiday policies and procedures, repatriation issues and so on. We cannot be more impressed with the detailed arrangement of all messages by the UN secretariat, the comprehensive standardized rules, the clear division of power and responsibilities. Only in this way, can the basic guarantees the peacekeeping operations be efficiently, effectively and securely implemented and can the rights and interests of peacekeeping police be duly ensured, hence the smooth work of the operation.

Besides, *Guide to the Death and Mutilation Claims* is another document paying direct attention to the rights and interests of peacekeeping police. It explicitly clarifies major issues for the special care and preferential treatment of police casualties, namely, the standard for death and mutilation claims, its qualification, procedures, and circumstances not awarded compensation. The highest damages reach $50,000 and the funeral fees shall not exceed $5,000. It also clarifies the standard for "casualties of duty performance," excluding casualties due to obvious dereliction of duty and deliberate misconduct. Further it states detailed provisions for reimbursement of compensation, reimbursement of medical evacuation and the expense for repatriation. It even stipulates that the UN assumes the obligation to pay the damages as quickly and preferentially as possible. Conclusively speaking, this document fully embodies deep humanitarian care.

In a word, the rights and interests protection for peacekeeping police under UN legal framework is relatively complete and comprehensive. Either the legislation of human rights or the specific institutional design embraces the calmness and gentility of human rights. Comparatively speaking, domestic law of rights and interests protection for peacekeeping police has a large room for further improvement.

III. Rights and Interests Protection for the Peacekeeping Police from the Perspective of Domestic Laws

Domestically, the rights and interests protection for peacekeeping police centers around the legal design, involving around legitimate recognition of peacekeeping operation, legitimate recognition of the peacekeeping police identity, education and training, preferential treatment. Since the police perform law enforcement in the countries of residence, mission zone of the UN, the above legal designs mainly refer to the corresponding international legal documents. Domestic laws mainly concentrate on the rights and interests protection for the individual policeman. Compared to the international law, domestic law is expected to improve in terms of self design and coordination. Besides, the internalization of the international laws still has large room to improve.

Firstly, the paper will be approached from the perspective of the domestic institution and its coordination. The framework of rights and interests protection for the police in domestic law, based on the *Constitution*, with *Criminal Law, Civil Law* at its backbone and *People's Police Law* playing the front, includes a series of laws and regulations namely: *Administration Punishment of Law and Order, Regulations for the Use of Equipment and Weapons of the Police, Regulations for the Urban Police Patrolling, Labor Law, Civil Servant Law,* and *Pensions Regulations for the Police in the Public Security Organ*. Currently, legally institutional design and its coordination need further improvement. In terms of education and training, apart from the principal regulations of *People's Police Law,* there are no related regulations in domestic laws. Besides, the category and dimension for the training are expected to be broadened. *Pensions Regulations for the Police in the Public Security Organ* can only be referred as there are no particular regulations for the injury and death pensions targeted to the peacekeeping police. However, *Pensions Regulations for the Police in the Public Security Organ* itself exists defects, with room for further improvement. Paragraph 2 of Article 41 in the *People's Police Law (1995)* states: family members of the police sacrificed or died of disease receive the same pension and preferential treatment as the family members of military personnel sacrificed or died of disease. As the national law, *People's Police Law* identifies the same pension and preferential treatment standard as the military personnel. However, Article 12 of *Pensions Regulations for the Police in the Public Security Organ* of Nov, 1996 stipulates the standard of one-time pension for the death of people's police: (a) revolutionary martyrs: 80 months' salary; (b) military personnel sacrificed for official duty: 40 months' salary; (c) military personnel died of disease: 20 months' salary. Obviously, *Pensions Regulations for the Police in the Public Security Organ* is not consistent with its higher law *People's Police Law* as during the course of draft for the former regulation, the State Council improved the treatment of military families by raising the standard in light of the actual conditions. Yet, Ministry of Public Security still follows the old pension treatment standards without in time adjustment after the implementation

of the new standards. Thus the higher law is neglected, which leads to the award situation of different pension standards in 2009 Haiti peacekeeping and antiriot operation. When peacekeepers died, they received different pension treatments, as some of them belonged to military personnel of Public Security organs, following the standard of *Pensions Regulations for the Military Force,* while some were professional police, only following the standard of *Pensions Regulations for the Police in the Public Security Organ*. This special incident brings the long existing problem in the spotlight. Since the duty and mission carried by the peacekeeping police is riskier than that of domestic police, it is natural for them to receive a higher and more comprehensive guarantee considering the theory that the riskier the task is, the higher its guarantees are.

Besides, speaking from the domestic internalization of the international laws, China is relatively deficient in this respect. In US, its internalization of international laws is ideal, as all the international conventions at her signature have their corresponding domestic laws. Though South Korea doesn't internalize the international laws, it simply incorporates international laws into its own. In other words, international laws are recognized to have legal force directly. Japan develops the peacekeeping operation laws, by recognizing the legitimacy of domestic peacekeeping law first, then specifying the qualifications, procedures, education and training, pension and preferential treatment for the peacekeeping police. Japanese peacekeeping law is considered as the most complete and comprehensive legislation in the world. In this regard, China still has a long way to go. The domestic legislation for peacekeeping is still mainly relied on related policies and command, which is not conducive to the domestic and international peacekeeping in the long run. Deficiencies of rights and interests protection for the peacekeeping police are equally detrimental to the healthy and orderly development of peacekeeping operations. Improvement for the rights and interests protection is one of the immediate and crucial problems to solve in the internalization of international laws.

Conclusion

Appreciation comes from close comparison. Deficiencies are found through the comparison of domestic and international laws for peacekeeping police rights and interests protection. Firstly, it is necessary to renew our concepts; then efforts should be given to the institutional design and building. However, gap between China and the international community can't represent our ability and difficulties fail to stop us from going forward. Only constant institutional improvement can push forward the legal process and the construction of human rights protection system.

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