

Teaching Human Rights: The Culture Question

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THE PERCEIVED contradiction between human rights and local cultures is unfortunately misplaced, and constitutes a major obstacle to the understanding of human rights in formal and non-formal educational settings. While there are areas of conflict between the internationally defined human rights and local cultures, there are also many areas of convergence between the two.

This problematic perception is traceable to the inadequate understanding of human rights as well as the lack of information on the process of international human rights standards setting.

It could have also resulted from the statements of some Asian governments and their leaders in the 1990s that promoted human rights as non-Asian concept.

The projection of human rights as imposition of foreign culture reached an alarming level in Asia in the 1990s, while some communities in the Pacific expressed reservation on human rights due to differences with their cultural practices.

However, the Asia-Pacific region has sufficient historical and cultural resources to counter these views. These resources are important in ensuring proper understanding and practice of human rights.

The Issue

Prior to the World Conference on Human Rights in 1993, national and international media had been giving much space to a “debate” on whether or not “Asian values” existed. The “debate” pitted political leaders in a number of countries in Asia against each other. On one side, a group of prominent leaders particularly the then Singaporean Prime Minister Lee Kuan Yew, the then Malaysian Prime Minister Mahathir Mohammad, and supported by the then Indonesian President Soeharto, argued on the existence of a set of so-called “Asian values” that were distinguishable from the so-called “Western values”.¹

Another group of prominent leaders argued on the opposite side, namely, South Korea's then political leader Kim Dae Jung, the Philippines' former President Corazon C. Aquino and then Philippine President Fidel Ramos, and Burma's political leader Aung Sang Suu Kyi. The debate covered economics, politics, social behavior and human rights.

The "Asian values" proponents by and large support an authoritarian form of government as a necessity to maintain peace, harmony and prosperity. As a consequence, rights and freedoms seen as individual entitlements ought to give way to the welfare of the "majority."

One scholar explains that the "Asian values" idea can be sourced from the Singaporean situation, a "city-state with a Eurasian culture and ethnically mixed Asian (but predominantly Chinese) population." According to the scholar,²

Singapore has a genuine need to formulate some value consensus among diverse—and potentially divisive—ethnic and religious groups that will serve as a common denominator for public morality, for civil conduct of affairs, and for the work ethic that is needed to sustain high level of economic growth.

But this objective is premised on a "prime belief in ruling circles that only strong, steady leadership can keep communal peace, and that authoritarian government, providing firm policy direction and social stability, is the necessary condition for continued economic growth."³

The idea promoted by Singaporean leaders at least during the late 1980s and the 1990s was hardly unique in Southeast Asia. During the late-1950s-1970s period, Sukarno implemented (and continued by Soeharto) the "guided democracy" principle in Indonesia while the Philippines' Ferdinand Marcos imposed "constitutional authoritarianism" on the country. The military-ruled governments in Thailand and Burma, in the 1970s, would probably be of the same type. They all stressed the need for strong government, disciplined citizenry (meaning people obedient to government orders), role of the military, and development. These ideas are variations of national security state concept with a supposed national development agenda.

The experience of economic growth under authoritarian rule in South Korea and Taiwan provided support for this view in the eyes of these Southeast Asian authoritarian political leaders.

Sustained economic growth supported by an authoritarian government seems to be one of the key ideas underpinning the “Asian values” argument.⁴ In effect, ideas that would not support an authoritarian form of government should be temporarily set aside, or ignored for being non-Asian concepts. From this perspective, the idea of universality of human rights qualifies as such non-Asian concept.

The debate generated so much heat that there was fear that the Regional Meeting for Asia of the World Conference on Human Rights being held in Bangkok in March 1993 would result in a formal declaration of “non-universality” of human rights. The representatives of non-governmental organizations, holding a parallel meeting, saw not simply an economic basis for the “Asian values” stance but outright attempt to restrict human rights. They were prompted to state in the intergovernmental meeting that⁵

[A]ny suggestion that the human rights embodied in the existing instruments such as the International Covenants on Human Rights are not applicable [to] the Asian context must be resolutely rejected. We reject the position of divisibility of human rights used in an attempt to negate the universality of these rights.

This argument is ... used ... to deny civil and political rights by enforcing measures which are claimed to be necessary for national or internal security or peace and order, for deterrence against “terrorist” activities or to justify discrimination against women, indigenous peoples and other marginalized social groups.

States have the responsibility to harmonize national approaches with universal standards of fundamental human rights.

The Asian governments agreed in Article 8 of its Bangkok Declaration⁶ to:

8. 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.

It is important to note in this statement not the reiteration of universality principle but the strong qualification in the application of the principle.

The provision, in requiring the consideration of 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,” echoed a relativist approach to human rights. This gave rise to several questions: How would “national and regional peculiarities” and “historical, cultural and religious backgrounds” be considered in dealing with human rights? Could this approach in applying human rights lead to weaker subscription to the international human rights standards by governments, as feared by the non-governmental organizations?

Three months later, the United Nations World Conference on Human Rights (Vienna Conference) held in Vienna, Austria adopted on 25 June 1993 the Vienna Declaration and Programme of Action (VDPA). It provides among others the following: (Article 5)

5. 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.

While Article 5 of the VDPA drew inspiration from Article 8 of the Bangkok Declaration, textual analysis reveals a difference between the two provisions. Article 5 of the VDPA clearly and strongly emphasizes that States must perform their “duty” to promote and protect human rights “regardless of their political, economic and cultural systems.” Article 8 of the Bangkok Declaration emphasizes the peculiarities and diverse backgrounds of States that must be considered in dealing with human rights.

Article 5 of the VDPA asserts the primacy of state obligation to protect, promote and realize human rights. Article 8 of the Bangkok Declaration asserts the primacy of the context within which that state obligation must operate.

This is not a minor difference in the context of the “Asian values” debate, which basically lowers commitment to fulfillment of human rights obligations of States in the name of culture and other peculiarities, or for the sake

of economic development/growth. Article 8 of the Bangkok Declaration does not conflict with the “Asian values” perspective.

The 1993 VDPA settled the issue of universality of human rights, including their “universal” implementation. And the member-states of the United Nations were expected to faithfully implement the VDPA from 1993 onward.

The 1993 Joint Communiqué of the Foreign Ministers of six Association of the Southeast Asian Nations (ASEAN) member-states issued immediately after the adoption of VDPA set the alarm early on about the full compliance with the VDPA commitments. The human rights section of the Joint Communiqué states, among others, the following:⁷

They stressed that human rights are interrelated and indivisible comprising civil, political, economic, social and cultural rights. These rights are of equal importance. They should be addressed in a balanced and integrated manner and protected and promoted with due regard for specific cultural, social, economic and political circumstances. They emphasized that the promotion and protection of human rights should not be politicized.

The word “universality” does not appear in describing human rights and the “duty of States, regardless” clause of the VDPA is missing. There is a strong hint in this Joint Communiqué about the insistence of some Asian governments on the original stance made on the issue embodied in the Bangkok Declaration, rather than on the “international consensus” on human rights expressed in VDPA. This Joint Communiqué provides a basis for thinking that this stance would probably define the actions of Asian states in Southeast Asia regarding protection and realization of human rights.

There is a certain irony in this situation considering that this Joint Communiqué is meant to report on the commitment of the ASEAN states⁸ involved in fulfilling the provisions of the VDPA.

The 2007 “Ministerial Meeting on Human Rights and Cultural Diversity” of the Non-Aligned Movement (NAM) provides another example of government ambivalence in adhering to the “duty of States, regardless” clause of Article 5 of the VDPA. The meeting, attended by many Asian member-states,⁹ adopted the 2007 Tehran Declaration and Programme of Action on Human Rights and Cultural Diversity. The declaration cites Article 5 of the

VDPA in full in its preamble, not in its operative paragraphs. And includes Article 4 in its operative paragraphs that provides:¹⁰

4. Recognized the significance of national and regional particularities and various historical, cultural and religious backgrounds and urged all actors on the international scene to contribute to the building of international order based on inclusion, justice, equality and equity, human dignity, mutual understanding and promotion of, and respect for cultural diversity and universal human rights;

This statement strongly resembles Article 8 of the Bangkok Declaration and continues to an extent the pre-eminence of the cultural and other particularities and backgrounds in considering human rights.

While the Tehran Declaration and Programme of Action correctly emphasizes the right to culture (or cultural diversity), it could have been more explicit in reiterating in its operative paragraphs the “duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms” declared by the VDPA.

Thus the question is: When Asian states adopt their own regional or subregional human rights-related agreements do they adhere closely to VDPA, including the universality provision?

In 2002, the member-states of the South Asian Association for Regional Cooperation (SAARC) ratified two regional conventions regarding the rights of women and children. In 2004, six Mekong states¹¹ signed, under the Coordinated Mekong Ministerial Initiative Against Human Trafficking (COMMIT Process), a memorandum of agreement (MOU) on combating human trafficking. Respect for the human rights of the trafficking victims is a key feature of this MOU (see Taylor and Sullivan on pages 58 to 59 of this publication).

In 2007, the Association of the Southeast Asian Nations (ASEAN) adopted the ASEAN Charter that laid the foundation for the creation of a rules-based ASEAN Community, and provided as one its principles the “respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice.” The charter led to the adoption in 2009 of the ASEAN Political-Security Community Blueprint with provisions on human rights and their mechanisms.¹²

While the adoption of these human rights or human rights-related sub-regional agreements belies the supposed imposition of foreign ideas in the region, their implementation with full support for the universality of human rights is still to be seen.

The 2011 resolution of the UN General Assembly on “The universal, indivisible, interrelated, interdependent and mutually reinforcing nature of all human rights and fundamental freedoms”¹³ provides an appropriate reiteration of Article 5 of the VDPA. The resolution provides the following relevant statements:

1. Reaffirms that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights, civil, political, economic, social and cultural rights must be treated in a fair and equal manner, on the same footing and with the same emphasis;

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6. Encourages States to take into account the universal, indivisible, interrelated, interdependent and mutually reinforcing nature of all human rights when integrating the promotion and protection of all human rights into relevant national policies and when promoting international cooperation in the field of human rights, while recalling that the primary responsibility for promoting and protecting human rights rests with the State.

This resolution should at least be a guide in any restatement of Article 5 of the VDPA at the regional and subregional levels.¹⁴

Context of the Debate¹⁵

The Asian efforts on linking cultures and human rights have particular contexts. These historical contexts largely played a role in debunking the so-called conflict between “Asian values” and human rights. It is necessary to recall in a summarized form the efforts at discussing human rights in a contextualized sense, that is in the context of Asia, and yet upholding the universality principle.

Much of the support for the harmonization of human rights principles with the values and cultures in Asia come from people who underwent historic evolution in their respective political systems. They are the people in

South Korea and Taiwan in Northeast Asia; Indonesia, the Philippines and Thailand in Southeast Asia; and India and Nepal in South Asia.

Repression to regeneration

People who experienced authoritarian rule in the decade of the 1970s (some date back to the 1960s) also experienced a pattern of repression, reform, reflection and regeneration.

The authoritarian governments in these countries brought about massive human rights violations in all forms—arbitrary detention, torture, disappearances, extra-judicial killings, media repression, prohibition of public assemblies, restriction of movement for some people, among others. Most governments justified the authoritarian rule as necessary for national security, indirectly saying that human rights had to be sacrificed for the benefit of the state. But the people knew that the national security justification was a façade for the continued rule by the then government leaders. They saw the human rights violations as mere attempts at stifling dissent, no matter how reasonable the dissent was. Thus the era of repression pervaded in many parts of Asia, largely abetted by the Cold War.

Since the people could see the hypocrisy of the rulers, they did not succumb to the repression. They persisted, using various creative means, in defending the victims of repression, in protecting the general populace from further control and repression, and in bringing the human rights issues out to the international community. These people, consisting of lawyers, professors, social activists, religious workers, students, workers and members of marginalized groups were advocates of democracy, human rights or justice in general. In many cases they were also the human rights violations victims. In some cases, appeals for support from the international community were premised on the call for international solidarity with human rights violations victims.

As the structure of repression and authoritarian rule slowly unraveled in the decades of the 1980s and 1990s, more and more people gained the courage to call for justice. As history shows, several authoritarian governments fell one after the other.

With the change in the political arena coming quite fast, the establishment of democratic governments became a challenge as much as a source of hope (in many cases the cause of unreasonably high expectations of change).

And who else would be in the best position to help bring this about but the very people who risked their lives for democracy and justice.

Thus the period of reform came about. Changes in the political structure brought free and open elections, human rights policies and institutions, systems of accountability, and even people's participation in governance. Those who figured well in the opposition to the authoritarian governments were given the chance to put into practice what they sacrificed for. At different times, the adoption of human rights policies and institutions came about due to their presence in the government to the applause of the people and the international community.

But making the system work is a totally different matter. While imbued with the best of intentions, the new system had to work on a hit-and-miss basis. The unreasonably high expectations of the public brought by change of government were not completely met. Human rights, while formally respected by the governments, continued to be violated nevertheless.

If the goals of achieving full democracy and respect for human rights remained, a review of the experiences had to be done. This was the period of reflection. Were things working in the way they were meant to be? Had there been a total rejection of the authoritarian ways of governance, or did they simply mutate into more subtle forms? Was the attitude of those who held power—from the bureaucrats to the members of the police and military—changed toward democratic governance and full respect for human rights? Did the people who came to power maintain their adherence to democratic principles or to human rights, or did they themselves become autocrats and human rights violators? There were many questions that should be raised in the transition from repressive situation to a system of governance guided by principles of justice.¹⁶

The call to recognize women's rights as human rights formed part of this problem. Did we really mean full democracy, and all human rights for all? Did we really treat all sectors of society equally and fairly?

The stage for regeneration started with the efforts toward inclusiveness in terms of human rights advocacy. New issues were as important as the older human rights issues of political repression. Systems review required respect for the rights not only of the "men heroes" but also of the "women victims"¹⁷ of human rights violations and of the indigenous peoples, persons with disabilities, people living with HIV/AIDS, sexual minorities, religious minorities, foreign residents, and so many other sectors of society that pre-

viously did not matter in human rights debates and advocacy. If the system was meant to be respectful of all human rights for all, then a new round of systems change had to occur.

Broadening conceptualization

The main message of human rights was change. This was raised in the 1970s in response to the repressive governments, and still being raised at present in view of the broadening scope of human rights. Human rights were seen, then and now, as solutions to the many problems of government, people and society as a whole. At the time when authoritarian governments had strong grip of the society, some people had only human rights as the reason for appealing for international help. Lacking ratification of international human rights instruments, they could at least use the Universal Declaration of Human Rights (UDHR) as basis for pleas to the international institutions and governments to help stop human rights violations, or to exhort people to assert their rights.¹⁸

But human rights had to be applied in concrete contexts. In the 1980s, there were initiatives at relating the then existing problems to human rights both in terms of formal declarations and field practice. This was the period of confluence. The 1983 *Declaration of the Basic Duties of ASEAN Peoples and Governments*¹⁹ drawn up by mainly law-oriented groups in Southeast Asia reflects to a large extent the human rights problems at the time as well as the reiteration of the international human rights standards in the context of Southeast Asia in the early 1980s.²⁰ The Declaration called for a stop to arbitrary detention, torture, and all forms of repression; people-centered development; people's participation in governance and in their own community affairs; and government accountability for human rights violations.

The phase of conceptualization followed in the 1990s.²¹ Human rights were "evolving" as new sections of society were given recognition as deserving of having their own rights properly recognized and respected. Thus the concept of the rights of the indigenous peoples, persons with disabilities, people living with HIV/AIDS, sexual minorities, religious minorities, foreign residents, and so many other sectors of people further refined human rights beyond the traditional civil-political-rights and economic-social-cultural-rights categories. Human rights were seen as inclusive, not merely universal, more than before in order to emphasize that people had differences yet they all are equal in rights. Conceptualizing human rights meant redefining,

reinterpreting human rights in light of new situations, new awareness, and new assertions.

Conceptualization of human rights is indeed a necessity since the world has ended the Cold War period that affected the view on human rights concepts during the years that followed from 1946. This conceptualization, however, does not refer to reconceptualization that advocates of the “Asian Values” would like to do. Instead, this refers to the refinement of the specific human rights as applied to specific peoples, issues and contexts, yet still subscribing to the international human rights standards.

The authoritarian period in Asia of the 1970s and 1980s likewise hindered the discussions on human rights from a more inclusive perspective since political repression was the more dominant concern. When persons with disabilities now say “Nothing About Us Without Us” there is a restatement, or even strengthening, of an “old” inclusive human rights principle to address the current context.

Whose Universality?

Proponents of “Asian Values” argue that human rights are Western European and Northern American ideas and therefore unfit for Asian peoples whose cultural, economic, social and political systems are different. But this view ignores the historical development of human rights as international standards, and thus confuses Western European and Northern American views with the post second world war views on human rights. What we now consider “universal” human rights refer to those that went through international processes of vigorous discussions and formal decisions to adopt human rights concepts. The international human rights standards did not arise automatically from Western European (and also Northern American) ideas since their own old perceptions of human rights or similar rights were not meant to be universal. One author explains this point clearly:²²

[T]he human rights of the first period (pre-1948 Universal Declaration of Human Rights) as they developed in Europe were by no means designed to be universal: there was to be no gradual expansion to include women and human beings of all races. Thus, it was only logical that the first initiative in international law towards international recognition of an equality of human beings that transcended the bounds of the white race did not come from the West. This is a historic fact that finds no mention

whatsoever in the usual Western publications on the “universal-ity of human rights”. Instead of duly recognizing what was in this respect an historic role played by Japan directly after the First World War, global assertions are made that it is restraining itself in participating in international platforms of human rights. But it was in Japan where the first ever “League for the Abolition of Racial Discrimination” was established immediately after the First World War. It was a Japanese diplomat who proposed at the Paris Peace Conference of 1918 that the principle of equality be included in the covenant of the League of Nations...” [which was not approved by major Western representatives such as then United States President Woodrow Wilson].

The universal human rights of the second period (after 1948 Universal Declaration of Human Rights) are as new for the West as they are for China. Less than 50 years have passed since both cultural spheres were confronted with such a universal conception for the first time. Indeed, the image of the human being underlying even the present-day concept of human rights—especially in the liberal-democratic states of the West—is still not truly universal. This is because the human rights position of the unborn human being—usually referred to in a trivializing manner as “unborn life” in a public debate in German-speaking areas—has yet to be clarified.

His mention of Japan’s role in promoting “universal” human rights is significant as it shows that not all “modern” ideas come from Europe. The universality of human rights, as currently defined, arose due to the participation of many more peoples from different parts of the world in setting human rights standards—particularly with the adoption of human rights conventions through the United Nations.

In addition, the principles of indivisibility and interdependence of rights are new. The drafters of the 1948 UDHR espoused the idea of fundamental unity of all human rights as shown in the “organic unity” of the document. This means that

each article of the Declaration must be interpreted in light of all the rest, and especially in light of others on the same topic or theme, and not necessarily in terms of its exact place in the final sequence. There were for them no two kinds of citizens in the realm of moral rights.²³

Essentially, therefore, civil, cultural, economic, political and social rights should be seen as one set.

The idea of “organic unity” of human rights upholds the principles of indivisibility and interdependence of rights. It was expressed in the motto of the 1993 World Conference on Human Rights: “All Human Rights for All.” That this motto had to be promoted in the 1993 conference indicated a need to re-emphasize basic principles (indivisibility, interrelatedness, interdependence, and universality of rights), but probably also to pre-empt attempts by some UN Member-states in early 1990s to put priority on one set of rights over another set of rights.

Cultures in Asia and Human Rights

There is a bit of irony in the fact that one of the most revered Asian icons, Mahatma Gandhi, expressed a view that supported the idea that human rights must be qualified by local cultural precepts. In Hindu culture, duty comes first before everything else. There is an oft-repeated excerpt of the letter of Mahatma Gandhi on 25 May 1947:²⁴

I learnt from my illiterate but wise mother that all rights to be deserved and preserved came from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Woman and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for.

Then Secretary General of UNESCO, Julian S. Huxley, asked Mahatma Gandhi in 1947 for his opinion on human rights as an input in the drafting of the rights to be included in the very first human rights document of the UN. The quoted letter was Mahatma Gandhi’s response. The letter suggested the need to discuss duty before rights, an idea that would not support the concept of human rights being based on human dignity and nothing else. His response instead provided the idea that human rights would not accrue to a person by simply being human but only after the performance of duty. This is problematic when we consider the inherent nature of human rights as expressed in the UDHR, “All human beings are born free and equal in dignity

and rights.” (Article 1) There is no qualification to enjoying human rights immediately after birth.

Gandhi’s 1947 letter, while cited in many human rights articles, has not been evaluated based on the provisions of the UDHR. One author notes that the Gandhi letter likely reflects what many Indians would think about human rights in line with the Hindu principles.²⁵ In relation to human rights education, the former Chairperson of the National Human Rights Commission of India argues for the inclusion of “component of obligations towards others.” Citing Gandhi’s 1947 letter, he explains that²⁶

[T]his concept is reflected in Article 51A of the Constitution of India which enumerates the fundamental duties of every citizen and is required to be read along with the fundamental rights guaranteed in Part III thereof. This concept is gaining international recognition in as much as a draft Universal Declaration of Human Responsibilities (1997) on similar lines has been prepared for adoption by the General Assembly of the United Nations as complementary to the Universal Declaration of Human Rights.

The University Grants Commission of India provides another view on this issue by explaining how human rights education should play a role in the Indian cultural context:²⁷

Although every right entails a duty, there has been a feeling in certain quarters that rights education is promoted and the question of duties has not been adequately addressed. In a society which emphasized on duties for centuries, rights education comes as a correction of historical distortions. The violation of rights could be corrected only when the privileged persons are reminded of their duties towards the marginalized sections, and the marginalized sections are gradually empowered through rights education. HRE [Human rights education] at these levels would extend to such areas as gender equity, caste and community relations, majority-minority conflicts, ‘forward-backward’ dilemma and North-South power relations. In short, all power relations have to be humanized and democratized through restructuring of rights and duties.

What is notable in this statement is the view about the necessity of using human rights to correct “historical distortions” and the emphasis on the duty of the “privileged persons” toward the marginalized sections in society. And the last statement about humanizing and democratizing “all” power relations ensures that this view does not promote paternalism.

Including “obligation/duty” in the human rights concept is not a problem as it is already part of the UDHR. But the idea of performing obligation/duty first before meriting enjoyment of human rights is controversial. The complementarity idea (rights being complemented by obligations) is more in line with the international thinking. (See the discussion below on a similar interpretation on how obligation relates to the human rights concept.)

During the past several decades, there have been efforts in finding positive support for human rights in local cultures and major religions. In Sri Lanka, in 1982, the Sri Lanka Foundation convened the “Seminar on Religious and Cultural Traditions of Human Rights in Sri Lanka” that came up with a set of reports on links between major religions and human rights. The seminar concluded, among others, that²⁸

fundamental human rights are inalienable and that a valid basis for the meaningful consideration of human rights is the universal love of man and animal and the respect for everything that exists, both animate and inanimate, including the environment. While the different religions have their distinct religious perceptions and philosophical explanation of the universe, of human relationships, of development, of motivations and of ultimate destiny, the religious and cultural traditions of the five major religions uphold in common certain basic moral and ethical values for the promotion of which man must be enabled to exercise his rights and perform his duties in a mutuality of relationships. Among these values held in common are human dignity and worth, [e]quality, freedom, love and compassion, truth, justice, brotherhood and charity.

In 1988, the same organization that organized the 1982 seminar came out with a book that explained the support of major religions to each provision of the UDHR.²⁹ The book states the importance of discussing human rights:³⁰

In a pluralistic society such as ours, a “common language” for common values is essential if we Sri Lankans are to live and work together, with understanding and genuine co-operation for

the common weal and welfare. The language of the Universal Declaration [of Human Rights] can provide that “common language” in that the concept and norms embodied in each of the Articles of the Declaration are found enshrined in the Buddhist, Hindu, Christian, and Islamic perspectives of social behaviour.

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It is the view of all that this book can help the overwhelming majority of Sri Lankans to realize that, while the Universal Declaration of Human Rights is comparatively of recent origin, the norms and values in each of its Articles were started centuries ago by the Lord Buddha, the Great Hindu Saints, the Lord Jesus Christ, and the Holy Prophet.

The book includes commentaries on each of the UDHR articles from the perspective of four major religions (Buddhism, Hinduism, Christianity and Islam).

On the question of duty and rights under Hinduism, the book speaks of mutual relationship, not of rights accruing from performance of duty. Moreover, the duty being referred to is linked to what is now called human rights state obligation. On Article 29 of the UDHR regarding duty to the community, the Hindu commentary of the book explains that³¹

[I]n the emphasis on one’s obligations to others lies an implicit recognition of the rights of the people to whom these obligations are owed. For example, the king’s obligation to protect his subject is, by implication, a recognition of the subject’s right to royal protection.

These Sri Lankan efforts on clarifying the relationship between religions and human rights were way ahead of the still to come controversy about “Asian values.” They reflect to a large extent the need to continue reviewing cultures and religions in light of ever-growing human rights concept, and the views of some Asian political leaders that support undemocratic form of governance.

In the same year, 1988, a Vietnamese scholar published a book that reviewed the old Vietnamese legal codes and sorted out those that relate to the modern international law standards on human rights. The author dis-

cussed issues covering integrity of the person, equality and discrimination, civil and political rights, economic, social and cultural rights and degree of government compliance with human rights obligations. The author was able to show the existence of legal provisions in the old Vietnamese legal codes that uphold human rights. He wrote³²

Using the framework of today's international human rights standards as instruments for data compilation about, and legal analysis of, a traditional East Asian polity, this study presents systematically organized arguments on human rights, substantiated by historical facts, thus contributing to the validation of the universality of today's international law of human rights—a research need for scholars as well as practitioners.

This analysis of the old Vietnamese legal codes is another example of efforts to understand the international human rights standards in the context of national history and traditions. Having been done prior to the debate on supposed conflict between Asian cultures/values and human rights, this effort deserves serious attention.

Similarly, a Cambodian human rights organization undertook in 1997 an initial study of the relations between human rights and Khmer culture. The short report discussed a number of specific articles in the UDHR and explained how they were related to Khmer culture (art, tradition, custom, history and religion).³³

Linking Rights to Cultures

One author cites John Humphrey, the main UN official that supported the drafting of the UDHR,³⁴ in describing Mr. Peng-chun Chang (representative of Republic of China) as a “master of the art of compromise and under cover of quotation from Confucius, would often provide a formula which made it possible for the [Human Rights] Commission to escape from impasse.”³⁵

The “art of compromise” was an important tool in intermingling ideas from various regions of the world during the drafting of the UDHR. Mr. Chang probably cited several Confucian quotes in order to help resolve issues. But did Mr. Chang really use them as mere “cover” for his proposals to settle issues? The author neither mentions the Confucian quotations cited by Mr. Chang, nor provides examples on how they were used. There is a

possibility that Mr. Chang cited such quotations as bases of proposals. If so, the meaning of the rights in the UDHR would be much richer with Confucian ideas being part of the reasons behind them.

Nevertheless, the author makes it clear that those involved in drafting the UDHR had heard of pleas for consideration of the various cultures in their task. He writes:³⁶

At the start of the proceedings [Carlos P.] Romulo of the Philippines said that the Commission had to draft a bill “which could be accepted by all Members of the UN and ... should take the different cultural systems of the world into account.

The drafting of the UDHR involved people from Asia (Republic of China, India, Lebanon, Pakistan, the Philippines, Saudi Arabia, and Syria) who contributed to the debates on what rights should be included in the first human rights document of the UN. They most likely expressed ideas that were possibly based on the cultures in Asia.

With this background, a question arises: how can human rights be taught as ideas that have either similarity with ideas in Asia or have been indigenized in various local Asian and Pacific contexts?

The answer to this question consists of several approaches. Each approach recognizes the existence of link between human rights and cultures.³⁷ Culture in this sense is defined broadly covering language, religious beliefs, literature (poems, songs, novels), historical events, folklore, myths, etc.

Historical approach

Human rights ideas are derived from the basic concepts of justice, fairness and sense of humanity. Being basic concepts, they are found not only in a few cultures; they are found in many different cultures though in varying degrees of development. In discussing human rights, one way is to find such basic concepts expressed by leaders and institutions in the past that more or less relate to human rights. The historical approach to understanding human rights adds legitimacy to the idea of “universal” human rights.

The return to Iran in 2011 of the clay cylinder that contains the edict of King Cyrus of ancient Persia rekindled the pride of Iranians on their ancient cultural heritage. It has been reported that “since September [2010] this Ancient Persian artefact, claimed as the earliest written Bill of Rights,

has been feted, wept over and argued by more than one million Iranians.” An Iranian government official declared that the Cyrus Edict “reminded the world of his country’s ancient values.”³⁸

But more than an important relic of the past, the so-called Cyrus Edict (c. 576 BC - 530 BC) speaks of rights that are akin to present concept of human rights. The edict provides for a number of rights including the following:³⁹

- Freedom of religion
- Right against enslavement
- Freedom of movement.

The event that led to the issuance of the edict (conquering of the city-state of Babylon in 539 BC whose kings enslaved many people from other places) was itself important since it spoke of liberation from tyranny, and respect for diversity.

In India, Emperor Asoka is considered to be an enlightened Buddhist leader who issued edicts and had them engraved on rocks in various places. These so-called Asoka Rock Edicts prescribe principles that are considered supportive of human rights. Emperor Asoka is described in the following manner:⁴⁰

Emperor Asoka who began his reign (c. 274 BC) by extending his empire in the most ruthless manner changed completely after the carnage he saw he had caused in the Battle of Kalinga. It is evident that he was attracted to, and influenced by, the humanistic teachings of Buddhism which he subsequently embraced and then became one of its greatest patrons. His Rock Edict XII, besides the verses of the Pali Canon mentioned, is one of the most striking injunctions issued on religious tolerance and is worth quoting in some details. His subjects are enjoined “not to deprecate other religions” but on the contrary to see that “other religions are suitably honoured, for by doing so one exalts one’s co-religionists, and one “helps people belonging to other religions.”

The Asoka Rock Edicts were based on Buddhist principles, similar to the principles that were supposed to have guided other Buddhist and Hindu leaders in other places in Asia. One account explains this matter in relation to equality before the law:⁴¹

In the Buddhist historical context equal protection under the law had been a concern of monarchs like Asoka of the Maurya Empire (India), Indravarman II of Cambodia and, according to the Mahavamsa, of Sri Lankan Kings such as Mahaculi Mahatissa, Bhatikabhaya and the Tamil King Elara—to name just a few. This is perfectly in accord with the dictum in the Mahavamsa that monarchs should dispense “even justice toward friend and foe on occasions of disputes in law.”

In fifteenth century Vietnam, while the laws of the Le dynasty absorbed ideologies and laws from Chinese feudal states they developed nevertheless according to the then character of Vietnamese society. One author explains the independent development of legal concepts in fifteenth century Vietnam:⁴²

It was especially so in those regulations related to family and human rights. For example, the laws of Le dynasty defended the legitimate rights of women in their marriage relations... Many regulations were made to defend the rights and interests of women. For example, girls were entitled to the same inheritance as boys were; wives were entitled to get divorce; all measures that expressed a traditional respect for women in Vietnam. This was in utter opposition to the ideology of Chinese Confucianism, which preached “respect for men and contempt for women.” The laws of Le dynasty did not see as ‘undutiful’ any act of children to have their own properties or live away from their parents while the latter were still alive. This also meant that there was a considerable difference between Vietnamese and Chinese families.

Even in penal law, the Le dynasty differed from the Chinese penal laws by rejecting rod beating because it was “considered barbarous, as it caused painful physical injuries to the victim, staining the latter’s honor and dignity.”⁴³

Detailed analysis of the traditional Vietnamese laws reveals many more similarities with current international human rights standards.⁴⁴

Appropriation (or endogenization) approach

The never-ending exchange of ideas and systems among peoples in various parts of the world for centuries characterizes human history. Ideas and systems spread for a variety of reasons including trade, religious mission,

and military occupation. The Silk Road, for example, facilitated exchanges of ideas and systems between West and East Asia. The same is true between Europe and the Arab region and the South and Southeast Asia through land and sea routes. As a result, different ideas have been absorbed, or more properly “appropriated,” by “receiving societies.” In the late 19th century, Asian societies appropriated European ideas as their own. This is seen in the freedom movement in the Philippines where Filipino revolutionaries fought for freedom while echoing European ideas. Apolinario Mabini’s *The True Decalogue* written in 1898 is an example. Some relevant sections state:⁴⁵

VI. Strive for your country’s independence, for only you can have any real interest in its advancement, and your own liberty depends on its being free.

VII. Do not recognize in your country the authority of any person whom the people have not elected, for authority comes from God and God speaks through the conscience of every man.

These ideas constitute what we now consider to be components of a republican form of government, which include the right of suffrage for the people. The idea of securing the independence of the country expresses the right to self-determination. These ideas were certainly influenced by European liberal ideas, which were not necessarily pervasive in Europe itself by late nineteenth century, in view of the continuation of the rule of monarchies.

The same appropriation of ideas can be seen in Japan’s “Look West” policy under the new government (Meiji Reform era) after ending two hundred years of isolation due to pressure of American gunboat diplomacy. Yukichi Fukuzawa’s coining of the word “jinken” as Japanese word for human rights in late nineteenth century is a perfect example of appropriation of an idea.

Synthesis/Syncretization approach

Peoples in Asia mixed indigenous and foreign ideas to support their objective of gaining freedom from oppression. A good example is the use of the symbol of light. The concept of light is found in European as well as Asian cultures. Light (*lux*) is a symbol of knowledge or liberation from ignorance, and also liberation from suffering or oppression.

In Hindu theology, light is equivalent to “consciousness,” and is considered to be free (or have freedom). If lack of consciousness means lack of knowledge or ignorance, then an ignorant person suffers bondage.⁴⁶

The 1922 declaration of the National Levelers’ Association (Zenkoku Suiheisha), the *Suiheisha Declaration*, using the symbol of light to express the desire of oppressed people, states:⁴⁷

We, who know just how cold human society can be, who know what it is to be pitied, do fervently seek and adore the warmth and light of human life from deep within our hearts.

This seeking of the “light of human life” is a return to an earlier state of freedom and equality:

Brothers! Our ancestors pursued and practiced freedom and equality.

Since oppression deprived them of freedom and equality, the rational way to go was to move back to that earlier state:

Now, the time has come when we human beings, pulsing with this blood, are soon to regain our divine dignity. The time has come for the victims to throw off their stigma. The time has come for the blessing of the martyrs’ crown of thorns.

Vietnamese intellectuals in the 1920s freedom movement also espoused ideas that originated in Europe but expressed them in their own way. An important freedom movement personality during that time, Pan Boi Chau, said:⁴⁸

Human rights will rise like a golden sun, flooding the world with light.

The common use in Asia of light as a metaphor for freedom or liberation or simply gaining knowledge is an example of how an idea can be common to peoples regardless of their differences in culture and other peculiarities. Light is a common human experience and seen in the same way when

related to human situation of suffering and liberation from suffering—be it in Asia or Europe.

Indigenous concepts approach

The idea of human rights has similarity to indigenous concepts in different societies in Asia. Thus one author writes that words similar to human rights have existed in many cultures/peoples in Asia.⁴⁹

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

The translations of the words “human rights” into different languages reflect historical and religious development of Asian societies. Many countries in Asia did not seem to have any problem finding the equivalent terminology for human rights in their local languages. And since language grows by borrowing from other languages or cultures, people from countries that share similar outside cultural influences use almost similar adopted words to translate human rights into their own languages. Human rights have therefore been translated into local languages based on the cultural make up of the countries. Considering that several countries share cultural backgrounds, it is not a surprise to find their local language version of the words “human rights” to be similar in many ways:

a. Arabic stream – the Arabic translation for human rights, *haqūq al-’insān*, are similar to *haqqu* in Dhivehi (Maldives), *haqooq insaan* in Urdu (Pakistan), and *hak asasi manusia* in Bahasa Indonesia/Melayu/Brunei (Indonesia, Malaysia, Brunei).

b. Sanskrit stream – countries that have adopted Hindu-Buddhist tradition have translated human rights into *sittimanut* in Lao (Laos), *sethik monus* in Khmer (Cambodia), and *sitti-manutsayachon* in Thai

(Thailand). The root words are the Sanskrit words *sitti* that means rights or justice, and *manu* that means human. The Hindi (India) word for human rights is *manavadhikar* probably composed of *manu* (human being) and *adhikar* (rights). Similarly, the Malay language existing in Indonesia, Malaysia, and Brunei that had been influenced by the Hindu culture, translates human rights into *hak asasi manusia*, with *manusia* having the root word *manu*.

These translations of human rights in different languages illustrate the use of old concepts of justice found in older civilizations of the Arabs in the West and people in South Asia. Other translations, such as *karapatang pangtao* in the Philippines with the root word *dapat* that means that which is correct or right, are also likely based on the local concepts of justice. In other words, the human rights idea relates directly to indigenous or even borrowed words in local languages that mean justice, rights, and human.

Similarly, the histories of different societies in Asia provide examples of indigenous notions of equality such as those relating to women. In the Philippines, the pre-colonial women enjoyed rights and privileges, ruled over communities, and acted as “priestesses and even as military leaders.”⁵⁰ In Indonesia, in the thirteenth century, women ruled for twenty-four years without interruption.⁵¹ In Cambodia, during the Angkor period (802-1431 AD), women could “lead or manage public affairs [as] astrologers, professors, judges, secretaries, soldiers and high [ranking] officials.”⁵² Some people assert the continuation of this indigenous feminism in Southeast Asia despite the restrictions on women imposed by European colonialism and religions from outside the subregion.⁵³

Myths and folklores also describe societal systems and aspirations. Along with old stories written by women, these forms of literature portray women as leaders, independent-minded and strong. They also express equality between women and men, and the capacity of women to save men in time of distress.⁵⁴

The indigenous concepts therefore have much to offer in terms of rooting human rights in local cultures. They confirm the basic ideas of fairness, justice, and equality in some traditional societies. Indigenous concepts were probably expressed more in literature (writings, songs, poems) to oppose “mainstream” cultural-social-political norms. Some of these indigenous

concepts remained despite restrictions by later cultural influences (particularly through the European colonial rule).⁵⁵

One therefore has to argue for support for human rights by using the local cultural systems. One should not expect a total break from traditions and cultures in order to apply international human rights standards in local contexts.

A 2006 study of Pacific customs and their relationship to human rights provides similar result. The New Zealand Law Commission's report entitled *Converging Currents: Custom and Human Rights in the Pacific* explains the link between custom and human rights:⁵⁶

It is often assumed that they cannot. Some see human rights, with their perceived individualist bias, as a threat to custom. Others see custom as undermining individual rights, particularly those of disadvantaged or vulnerable groups such as women and young people.

The central thesis of *Converging Currents* is that, despite apparent areas of tension and conflict, custom and human rights can be harmonized in many cases by looking at the underlying values of each.

Converging Currents thus explains how this link can occur:⁵⁷

Certain values are also common to Pacific cultures, and it is these values that form the basis of custom. Respect for the individual dignity of all persons is perhaps the primary value underlying Pacific custom. From this flow other values such as the demonstration of love and care for others, consensus-based decision-making, and the maintenance of balance in relationships.

Such values are generally consistent with the values underlying human rights, which are also based on respect for individual human dignity. However, customary practices—what people actually do—do not always reflect customary values, or underlying beliefs about what is right. The Commission believes that much of the apparent conflict between custom and human rights is due not to the underlying values but to customary practices, and to resistance to calls for change to such practices by those in power within Pacific societies.

The distinction between “customary values” and “customary practices” is also significant in examining cultures in Asia. *Converging Currents* provides a view on customary practices:

Some customary practices need to change to accommodate human rights, and to bring practice more into line with underlying customary values, but this does not require the wholesale repudiation of custom. Indeed, by looking for common ground between custom and human rights, both may be enhanced. Human rights will be strengthened in the Pacific if they can be expressed in terms of local culture and customary values.

Just as there are cultural interpretations that say human rights are incompatible with local cultures, there are also cultural interpretations that show support for human rights in local cultures.

Reinterpretation approach

There are people who support the view that there are inherent contradictions between traditional cultures and human rights. They see little possibility of human rights being accommodated in particular cultural systems. The continuing caste system, for example, is seen as proof that Hinduism is not capable of allowing the principle of equality to exist. One author explains that⁵⁸

[T]he Hindu tradition does not believe in the concept of equality. The practice and prevalence of inequality has both the divine sanction and the sanction of the Law Books or the Dharma Shastras. There is no equality before the law or equal protection of law, since society has been arranged through a rigid system of social hierarchy based on caste.

Another author argues on practical grounds against the cultural values based on Buddhism to promote human rights:⁵⁹

In the context of the survival of the caste system and the apparent lack of influence of Buddhism over its continuity, we can pose a number of serious questions regarding the utility of using traditional categories or norms in propagating contemporary human rights values.

As earlier discussed, there are efforts that support the link between various religions in Asia and human rights. These efforts are largely premised on the principle of reinterpreting religious principles and traditional values in order to make them relevant to current realities.

Neo-Confucianists would look for ideas within the Confucian thought that would yield values shared with human rights.⁶⁰ As one scholar explains:⁶¹

The original construction of the Universal Declaration of Human Rights involved the participation of Confucians, and gained the subsequent adherence to it of countries sharing Confucian cultures. There is thus no basis for asserting any inherent compatibility between Confucianism and human rights to which most nations subscribe.

The person as understood by Confucianism in the context of human relationships is no less entitled to respect than the individual in Western human rights concepts. Thus the dichotomy of “individual” versus “community” rights is inapplicable and misleading in this case.

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Other Confucians called for schools and academies as centers of public discussion, and for a constitutional order providing for wider participation in the political process. Thus, although the Confucian communitarian tradition has been overshadowed by state power and bureaucratism, it did continue to propose, albeit in adverse circumstances, consensual alternatives for promoting a more balanced relationship among the individual, the community, and the state. It is to such Confucian advocates, and not spokesmen for state power, that one should look for a genuine Chinese communitarianism as the basis for the advancement of human rights.

Another proposes the “possible transformation of Confucian virtues into rights” described in the following manner:⁶²

the cultivation of virtues by individuals-in-community should lead to an awakening of duty consciousness in an individual to the community and the public, which in turn should call forth an awareness of the individual’s legitimate potential for participating in public affairs (no individual can be separated from the public). But claims to such participation on the part of the individual require participation also in an independent rational discourse of the public interest. It further calls for a conscious-

ness of the need for the ruling political power to conform to the public interest. Should rulers fail to conform to the public interest, protest and revolution against usurpation and oppression may well ensue, with the attendant assertion of people's rights against political encroachment.

It is also important to point out that there is at least one other idea that is known in Chinese society, Daoism. As against the emphasis on Confucian "bureaucratism," others would look to Daoism for its "eco-democratic humanism."⁶³ Daoism has played an important role in Chinese cultural development. As one author explains:⁶⁴

Daoism played an important role not only as an alternative cosmology (or more precisely cosmogony) to Confucianism but facilitated the syncretism between Chinese thought and other cultural/intellectual traditions. Already when China broadened its cultural contacts with the surrounding civilized and "barbar" societies, Daoism facilitated the integration of the non-Chinese cultures to the Chinese, and vice-versa. For example, Mahayana Buddhism is known to have received a strong influence from Daoism, and some specialists believe that a Confucian China would not have been able to accept this Indian religion without the mediation of Daoism.

Daoism therefore is an important cultural influence in Chinese thinking. And with its differing ideas from the Confucian ones, it is a crucial element to consider in discussing human rights in the context of China.

On Hinduism, one author supports the view that the Hindu Code of Manu propounds "essential human freedoms and controls and virtues of good life."⁶⁵ Citing another author, he explains that the "first five tenets of social assurances" include:

freedoms [sic] from violence (*ahimsa*), freedom from want (*as-teya*), freedom from exploitation (*aparigraha*), and freedom from early death and disease (*armritava* or *arogya*). To these five freedoms corresponded five virtues or controls: "absence of intolerance (*akrodha*), compassion (*adroha*), knowledge (*vidya* or *gyan*), freedom of conscience or freedom from fear, frustration and despair (*pravritti*, *abhaya*, *dhriti*).

He asserts that a fundamental requirement of human rights is the capacity to choose the preferred way of life that flows from the “freedom from material control of the mind.”

These and many other features of the Hindu belief support the idea of human rights. But there are also elements in Hinduism that go against human rights such as the caste system. He asserts that the caste system is a result of orthodox cultural practices, rather than the principles of Hinduism (or Rig Veda⁶⁶ specifically). He explains:⁶⁷

Rig Vedic traditions did not scheme a stratified society. The division of labor was conceived to be a crucial instrument for the regulation of society. The division of labor was founded on the concept of ‘equitable distribution of responsibility’...Vedic traditions were thus absolutely secular, non-discriminatory and equitable. However, the formation of orthodox cultural practices started to emerge once the interpretation of ‘Vedic traditions’ [became dominant] that took place in the form of *smritis* [writings] of *rishis* (learned men).

On the other hand, a relationship between caste system and human rights is seen as possible. One author discusses quite comprehensively the different approaches to reinterpreting the caste system in support of human rights. The author concludes⁶⁸

There are thus various ways in which the caste system can be brought into relationship with human rights, through the twin concepts of *varna*⁶⁹ and *jati*⁷⁰. The concept of *varna* can be viewed as a system of balancing duties and privileges. Human rights can be brought into relationship with both sides of this scale. The point at which Hindu thought makes its own contribution to human rights discourse is when it proposes that the discourse must view rights and duties as an integrated whole. Moreover, the application of the *varna* model to the contemporary world results in a surprising extension of human rights discourse.

In Buddhism, the idea that “each person is the Buddha to be” relates to the basis of human rights, human dignity.⁷¹

The reformist Islamic thinkers' interpretation of the concept of justice in the Qur'an support human rights. As one author notes, the Islamic law is "open to adaptation and change."⁷² And in reforming Islamic law, the "core principles which form the shared notions of justice in Islam and in international human rights instrument should provide a guide to the development of the *maqasid* [goals of law] for a revitalization of *usul fiqh* [methodology of deriving interpretations].⁷³ Examples⁷⁴ of *maqasid* include freedom (*hurriyah* to mean freedom of thought, belief, expression, action), justice and freedom, human dignity and rights, women's rights, treating women fairly, human development and others. Miswanto (pages 100-103) of this publication provides examples of *Maqasid al-Shariah* (Islamic law principles) that reconcile with human rights and used in Muhammadiyah school textbook in Indonesia.

With regard to gender equality, a reinterpretation of the Qur'an can follow a methodology or approach described as a hermeneutical model that

deals with three aspects of the Qur'anic text in order to support its conclusions. These are, the context in which the text was written; the grammatical composition of the text (how it says what it says); and the whole text, its *Weltanschauung* or worldview. She makes the distinction of making an analysis of the text and not the interpretations of the text. By going directly to the text in a fresh reading/analysis, Wadud overcomes the historicity of pre-modern *fiqh* and its juridical methodology to re-discover the universals to the Qur'anic message.⁷⁵

This methodology allows a reinterpretation of the Qur'an that considers the concept of equality as understood at present.

Using this methodology, an interpretation of a verse in the Qur'an resulted in the following observation:⁷⁶

...Qur'an worldview supports the equality of women and men, ...[and] recognizes difference (sex/biology) and the differences of roles/functions arising from biological differences. The reading also recognizes that constructed roles like child-caring and mothering are not limited to one's biology.

The notion that women and men are *awliyya* (guides and protectors) of one another suggests a relation of respect and mutual cooperation resting not on the idea of male "superiority" but on the premises of equal partnership.

In other words, the old understanding of traditions, cultural beliefs and religions are subject to reinterpretation in order to promote, protect and realize human welfare, potentials and rights. Cultural practices are themselves products of interpretations, some of which are unfortunately causing injustice and misery. Ending injustice and misery has never been wrong. Thus a review of the basic principles of traditions, cultural beliefs and religions from a positive vantage point (i.e., in support of human rights) and in consideration of the current contexts provides a fruitful exercise.

f. Legal concepts approach

Human rights are also considered important because the word “rights” is a legal concept. Ancient laws in Asian societies provide links to human rights, whether these laws are in the form of emperor’s edicts as in the case of Cyrus and Ashoka, or legal codes.

The fifteenth century Hoc Dung Penal Code during the Le dynasty in Vietnam included provisions similar to European legal concepts such as the⁷⁷

protection of civil liability compensation (including punitive damages) for the victims and the guarantees of procedural due process for the defendants in criminal law, the larger role of public policy in favour of the economically weak in contract law, the consistent and explicit provision of damages payments for all kinds of torts against property, person or reputation, the fair distribution and protection of property ownership, the equality of men and women in civil and property rights.

This law provides examples of non-European legal concepts that compare with modern legal concepts. They were probably ahead even of the legal concepts in sixteenth century Europe.

Current legal systems in Asia however developed by adapting legal ideas from Western Europe and North America not only because of colonial imposition but also because of recognition by some countries in the region of the value of, and need for, these late nineteenth century or early twentieth century ideas from other parts of the world. These countries sought foreign legal concepts and appropriated them into their respective legal systems from late nineteenth century. Even the formerly colonized countries in Asia continue to use colonial-era laws, though with changes in some

cases. This “legal transplantation” started from late nineteenth century. As a consequence, Spanish, Portuguese, French, German, English and American legal concepts are found in adapted forms in many national legal systems in Asia. This is a clear proof that ideas from Western Europe and Northern America have already been part of the legal structures in Asia, and the supposed conflict of ideas based on different cultural backgrounds has not led to dysfunctioning legal systems in most of the countries that had undergone “legal transplantation.” Problems that currently occur in the national legal systems would likely be due to abuse or misuse, rather than defect, of the system.

Most countries in Asia have Constitutions that provide for “basic rights,” “fundamental rights,” or “constitutional rights” that are essentially human rights. There are also Constitutions in Asia that explicitly mention human rights, led by the 1947 Constitution of Japan and those that followed in the Philippines, Thailand and recently China.

Also, there are domestic laws on specific issues (privacy, business, culture) and sectors (women, indigenous peoples, children, persons with disabilities) that protect human rights. They again prove that our current societies already recognize human rights, albeit with various degrees of limitation.

At the international level, business law provides so many rights (intellectual property rights, freedom to engage in business, right to protection from unfair trade practices, etc.) that have never been questioned by governments in Asia. While not all these business-related rights are human rights, they certainly resemble human rights in many ways.

Rooting human rights in the domestic legal system is not an issue. It is the weak recognition of such support for human rights in the domestic legal system that constitutes a major problem.

ASEAN Experience

The 2007 ASEAN Charter defines its human rights purpose as follows:

7. To strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member-States of ASEAN.

In terms of principles, the ASEAN Charter provides that ASEAN and its Member-States should act in accordance with

- (i) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;
- (j) uphold the United Nations Charter and international law, including international humanitarian law, subscribed to by the ASEAN Member-States.

As a concrete human rights measure, the ASEAN Charter provides for the following in Article 14:

1. In conformity with the principles and purposes of the ASEAN Charter relating to the protection and promotion of human rights and fundamental freedoms, ASEAN shall establish an ASEAN Human Rights Body.

In sum, the ASEAN Charter provides the over-all framework in terms of purpose, principles, and mechanism regarding the protection and promotion of human rights in the subregion.

In 2009, ASEAN adopted its Political-Security Community Blueprint (ASEAN Blueprint) that explains its objectives in the following manner:⁷⁸

ASEAN's cooperation in political development aims to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN, so as to ultimately create a Rules-based Community of shared values and norms. In the shaping and sharing of norms, ASEAN aims to achieve a standard of common adherence to norms of good conduct among member states of the ASEAN Community; consolidating and strengthening ASEAN's solidarity, cohesiveness and harmony; and contributing to the building of a peaceful, democratic, tolerant, participatory and transparent community in Southeast Asia.

What could be these "shared values and norms"? The ASEAN Blueprint could be referring to the values of peace, democracy, tolerance, participation and transparency as gleaned from the ASEAN objective of "building of

a peaceful, democratic, tolerant, participatory and transparent community in Southeast Asia.” Or could they be the supposed “Asian values” that emphasize obedience to authority, sense of national discipline, restraint in the exercise of rights particularly the political and civil rights, among others?

The ASEAN Blueprint also provides for the “exchange of information in the field of human rights among ASEAN countries in order to promote and protect human rights and fundamental freedoms of peoples in accordance with the ASEAN Charter and the Charter of the United Nations, and the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action” as part of the “actions” to be undertaken.⁷⁹

Would it be fair to interpret therefore that the ASEAN “shared values and norms” should include those that uphold the Charter of the United Nations, and the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action (VDPA)?

The subsequent implementation of the ASEAN Blueprint as well as that of the ASEAN Charter led to the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) in 2010.

Under its Terms of Reference,⁸⁰ the AICHR has

1.4 To promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities. [emphasis mine]

The Terms of Reference of the ACWC states as one of the objectives⁸¹ the following:

2.1 To promote and protect the human rights and fundamental freedoms of women and children in ASEAN, taking into consideration the different historical, political, sociocultural, religious and economic context in the region and the balances between rights and responsibilities. [emphasis mine]

The sentence structure of these provisions as well as content provide a virtual repetition of Article 8 of the Bangkok Declaration. This return to Article 8 of the Bangkok Declaration has been foreseen in the 1993 Joint Communiqué of six ASEAN member-states, as discussed above.

On the universality of human rights, the Terms of Reference of AICHR state:

2.2 Respect for international human rights principles, including universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms, as well as impartiality, objectivity, non-selectivity, non-discrimination, and avoidance of double standards and politicisation;

This provision restates Articles 10 and 7 of the Bangkok Declaration respectively:

10. Reaffirm the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the need to give equal emphasis to all categories of human rights;

7. Stress the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization, and that no violation of human rights can be justified.

Article 5 of the VDPA states that the “international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.” One wonders why ASEAN decided to use the language of Bangkok Declaration instead of the VDPA, this latter document is supposed to be upheld by AICHR (see Article 1.6, Purposes, Terms of Reference of AICHR).

On the whole, the ASEAN terms of reference for its human rights mechanisms emphasize how human rights should be considered, rather than state the strong commitment to fulfill state obligation on human rights regardless of backgrounds and other peculiarities of the countries involved.

While the proponents of “Asian values” have not been as strident and visible in 2000s and 2010s as compared to the situation in early 1990s, their ideas have not entirely disappeared. They are reflected to some extent in

inter-governmental declarations such as those related to the establishment of ASEAN human rights mechanisms.

Will this trend continue in the ASEAN Human Rights Declaration that would probably be adopted by the end of 2012? There is fear that this trend will continue.

The United Nations High Commissioner for Human Rights, Ms. Navanethem Pillay, stressed during the Seventh Official Meeting of the ASEAN Intergovernmental Commission on Human Rights on 28 November 2011 that:⁸²

[E]ach region of the world has its unique cultures, traditions, institutions and histories. But what is common to all the regions is an aspiration for democracy, the rule of law and human rights.

She explained this point by saying that

One of the most important tasks that AICHR is currently engaged in is the drafting of an ASEAN Human Rights Declaration, which will set the tone for the emerging ASEAN human rights system. I hope this Declaration will be firmly based on universal human rights standards as contained in international human rights instruments, including the Universal Declaration of Human Rights. At the very least, regional human rights instruments must maintain international human rights standards, and at their best they can enrich these standards, for instance by focussing on new areas such as the rights of the older persons or the responsibilities of business in relation to human rights.

She was most likely conscious of the human rights-culture debate or the perspective on contextualized approach to human rights of ASEAN that she had to make an explicit emphasis on subscription to the international human rights standards in the forthcoming ASEAN Human Rights Declaration. She was very clear that any regional human rights instrument “must maintain international human rights standards.”

She received support from members of the civil society in Southeast Asia when they stated that “[T]he AHRD [ASEAN Human Rights Declaration] must fully uphold international human rights law and standards without

qualification.”⁸³ This view was elaborated in discussing the issues of “[N]ational and regional particularities” and “different backgrounds” that harked back to Article 8 of the 1993 Bangkok Declaration.

They declared:

We are proud of the rich variety of cultures, traditions, languages and peoples in ASEAN. This diversity can and should enhance and deepen ASEAN’s contribution to human rights in the region and globally. However, we are concerned that certain governments use the notion of “national, regional and cultural particularities” as a code for imposing restrictions on human rights within the AHRD. For example, when women’s bodies are deemed as extension of the community in the name of a culture or a tradition, women’s mobility within and outside the community tends to be restricted. Yet it is the same mobility, which must be protected, to allow women to access and participate in their culture and its transformation away from those practices which infringe on their human rights.

Reminiscent of the Asian regional NGO statement in 1993 earlier cited, the members of the civil society in Southeast Asia made a strong demand:

The cultural relativist approach to “particularities” and “backgrounds” must be firmly rejected, as human rights are universal and the people of ASEAN deserve the same level of respect, protection and fulfilment of their human rights that is provided universally and in other regions.

The United Nations High Commissioner for Human Rights and the Southeast Asian civil society share similar concern that ASEAN would formalize a stance opposite to the universality of human rights that the 1993 VDPA had resolved. The manner by which the ASEAN Human Rights Declaration is being drafted raises the possibility that ASEAN would revert to Article 8 of the Bangkok Declaration, and disregard Article 5 of VDPA.

It should be emphasized however that the questions raised on the way ASEAN governments as a whole define human rights should not lessen the appreciation of the efforts of the women and men whose commitment to human rights sustains their work as members of AICHR and ACWC respectively. The top priority themes under the first five-year Work Plan of ACWC

show the members' grasp of the human rights issues affecting women and children in Southeast Asia.⁸⁴

elimination of violence against women and children; trafficking in women and children; women and children living with and affected by HIV and AIDS; social impact of climate change on women and children; promotion and protection of the rights of women and children with disabilities; ASEAN and other instruments related to the rights of women and children; child protection system: integrative/comprehensive approach for children in need for social protection; the right to quality education, including Early Childhood Care, Development and Education (ECCDE); the right of children to participate in all affairs that affect them; women participation in politics and decision making, governance and democracy; strengthening economic rights of women with regards to feminization of poverty, women's right to land and property; promoting implementation of international [sic], gender equality in education (textbook, curriculum, and equal access); strengthening institutional capacities of ACWC; and promotion of consultation and dialogue with stakeholders at national and regional levels.

But how these issues will be addressed by ACWC in relation to national situations remains to be seen.

Popular Perceptions

The report on the temporary return of the Cyrus Cylinder to Iran in 2010 cited earlier quotes a young Iranian artist:⁸⁵

It is so important for us that 2,500 years ago we had human rights in our country. We get very emotional about this. Government and people are separate. Government think one thing, and the people something else.

The sentiment expressed relates to the gap between the official statements of governments and also by intellectual elites and the thought and practice of the people. The same observation is true regarding elite-es-

poused Confucianism vis-à-vis the popular perception. One author explains it in this way:⁸⁶

Popular Confucianism, as it affects the man or woman in the street, is far removed from high Confucian theory. It is perhaps no more than a vague amalgam of residual ethical beliefs and a bias towards particular practices not amenable to rational analysis but nevertheless prompting certain attitudes towards the family, education, social responsibility and views of government. The family is the focus of attention and close affections, education is respected, public service [is] honoured, but government [is] viewed with a measure of suspicion. There is a concern to keep some distance between one's family and the state, whose intentions cannot, in the last resort, be fully trusted. Such attitudes are neither obviously democratic nor readily authoritarian. They do, however, appear to lend themselves to the kind of participatory community politics which these globalizing societies appear to spawn.

Similarly, in the dynamic business practices of the overseas Chinese, what we see is not the high Confucianism of the intellectual elite—which is extremely stifling towards entrepreneurial initiative and innovative ideas—but the vulgar Confucianism of ordinary people, far removed from the centre of traditional culture. A merchant father—as vulgar Confucianist—can send his sons out to secure their own fortunes and the sons can be extremely daring in their business dealings, knowing that should they fail, they have the security of the extended family to fall back on. They can therefore assume risks which they might otherwise not consider. The high Confucian mandarin, on the other hand, would not dream of allowing his sons to engage in business ventures, as even the smallest risk of failure carries the possibility of dishonouring the family.

Indeed, governments' use of human rights for political ends does not necessarily reflect what the people think. At the same time, intellectual elites are not necessarily able to provide ideas that ordinary people would subscribe to.

This is the context where human rights education has to operate. Human rights education has to consider how ordinary people think and behave in order to be effective. At the same time, there should also be human rights education for those holding power in government and other institutions in

society that would bridge the gap on perception of human rights between them and the ordinary people.

The different approaches to understanding human rights vis-à-vis culture briefly discussed in this article are supportive of ordinary people's perspective. Instead of relying on intellectual discussion, they frame the human rights idea within the domain of popular knowledge. Human rights should never be understood as an elitist idea, but an idea that people encounter in their own languages, religions, folklore, literature, in the histories of their own peoples and societies, and in their sense of adaptation to the current world.

Formal institutions related to human rights (including the legal system) should develop from this popular perspective.

Final Note

Human rights as defined in United Nations instruments have long been encountering obstacles toward fuller realization among many peoples. The greatest challenge to full human rights realization comes from the resistance of various sectors based on a range of reasons: from political to cultural. The resistance comes from both institutions and individuals.

Studies⁸⁷ show that there exists a serious gap between the people's perception of human rights and the states-adopted human rights instruments. Resistance comes from a misunderstanding of the international human rights standards. In one survey, teachers would rather teach child rights, according to the Convention on the Rights of the Child, than the "militant" content of the UDHR.⁸⁸ This shows the problem of wrong perception of human rights as a whole.⁸⁹

Some Asian government leaders find it useful to use Asian cultures as justification for ignoring human rights. This view exploits the existence of ideas within the varied cultures of Asia that conflict with the international human rights standards, including those practices that oppress people (such as the caste system and *buraku* discrimination). Likewise, at the individual level, the traditional culture of respect for people of higher classes (bordering on exploitation in many cases), lead people of the lower classes to not recognize their own freedom and thus reject human rights.

Thus culture must be reassessed to become a means to exercise/regain freedom. A response to the situation can be cultural in form.

The words for human rights in many countries in Southeast Asia combine Hindu-Buddhist-Arabic ideas. The concept of freedom is an indigenous idea that has been combined with influences from the religions and cultures that came to the shores of Southeast Asia centuries before. The colonial experience provided the “national form” of the freedom concept as people fight as “one nation” against foreign colonizers. One study shows that cultures can be reinterpreted, synthesized and reappropriated in order to find support for human rights in traditional principles.⁹⁰ While some people see the problem with Confucianism or Hinduism supporting human rights, others see a different aspect of these influential cultural ideas that support human rights. Others would look at indigenous concepts (or even folklore) to show how people have already been practicing ideas within their own specific contexts that are similar to what we now call human rights.

In all efforts at placing human rights within one’s cultural milieu, and using culture to promote human rights, a basic rule to follow is reaffirmation. States have time and again formally stated in international documents (including agreements) that they reaffirm “their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women.” This is a necessary premise in all their human rights statements so as not to lose track of the basic foundation of all human rights initiatives.

Similarly, efforts to promote human rights must reaffirm the basic principles. There is a danger of human rights being used as a political tool rather than an end in themselves if the basic principles were not given prominence.

Experience in Asia and the Pacific would point to the Convention on the Rights of the Child as a significant opening to reaffirm the basic principles of human rights. Aside from having been widely ratified by states in Asia and the Pacific, it also has provisions on culture. It provides for the complete set of rights—civil, cultural, economic, political and social rights—to be enjoyed by the children.

Human rights education, on the other hand, can follow these culture-related principle and recommendation:⁹¹

Principles

5. Human rights education in Asia-Pacific countries must draw on the rich cultural heritage and diversity in this region

including appropriate recognition of family and community values.

Recommendations

2. Evolve appropriate and effective human rights teaching strategies that build on the liberating elements of indigenous concepts, folk knowledge and cultural practices.

Since values education is part of the school curriculum of many countries in Asia and the Pacific, it has been considered as one form of teaching or learning human rights. Those values that are seen as generally accepted by people have been utilized to explain human rights. The idea is that values, including those considered to be of traditional kind, are underlying principles of human rights. Understanding values can therefore lead to an appreciation of human rights.⁹² Some values (such as freedom, privacy, respect for life) are actually human rights themselves. Human rights education can therefore be taught either as straightforward human rights subject or integrated in core and non-core subjects in the school curriculum. Various types of education (education for international understanding, education for sustainable development, peace education, etc.) are vehicles of human rights education,⁹³ as long as human rights are deliberately presented in appropriate form.

Finally, the promotion of human rights must work with the current fast-developing cultural vehicles—the information and communication technologies—that affect a large section of today’s society. The current, and likely in the future too, dominant mode of information source (including culture change) has to be mobilized for human rights. It is a significant area of work since it is currently affecting the world of the young generation. Human rights education is also a future-oriented endeavor that should aim at continuity as well as change of culture using whatever effective means available.⁹⁴

Culture change is constant. Human rights must therefore be reaffirmed as well as developed within the continuing context of culture change.

This is an expanded version of the article of the author published with the title “Conflict on Asian Values: Human Rights and Culture” in Kazue Muta, Yasumasa Hirasawa and Shinichiro Ishida, editors, *Conflict Between Justice, Gender and Local Traditions* (Conflict Studies in the Humanities Series no. 3) Osaka: Osaka University Press, 2012), pages 123-160.

Endnotes

1 For a discussion on the debate that is supportive of the “Asian values” argument, see Simon Tay, “Asia’s Contribution to Human Rights,” Tan Ngoh Tiong and Kripa Sridharan, editors, *Human Rights Perspectives* (Singapore: United Nations Singapore, 1999), pages 109-112.

2 De Bary, Wm. Theodore, *Asian Values and Human Rights – A Confucian Communitarian Perspective* (Cambridge: Harvard University Press, 1998), page 3.

3 Ibid.

4 A 1990s account on this debate is as follows:

Lee Kuan Yew of Singapore criticized the Philippine system for causing “... undisciplined and disorderly conditions which are inimical to development”. He explains that the “... Philippines has an American-style Constitution, one of the most difficult to operate in the world. There is a complete separation of powers between the executive, legislature, and judiciary. But a developing country faced with disorder and under-development needs a strong, honest government. The Ramos presidency will have to prove that this democratic constitution can be made to work and that development is achievable. Many checks and balances have been written into the constitution to guard against abuse of power. But they must not lead to paralysis of government. At the end of the day, the discussion and debate, the legislature must allow the executive to take hard decisions.” [An author countered this view by saying that the] success of the Philippine experiment on development and democracy will prove Lee Kuan Yew wrong and set a new thesis on development in a developing country setting.” See Armando Doronila, “Democracy and Development,” *INTERSECT*, vol. 8 no. 8 September 1994, Institute on Church and Social Issues, Ateneo de Manila University, Quezon city, Philippines.

In a November 1996 article in *The Economist*, it is reported that the concept of democracy and development seems to be getting realized in the Philippines. With the economic development that has happened up to November 1996, “maybe Mr. Lee was wrong.” See “Learning from the Philippines,” *The Economist*, November 16, 1996, pages 19-20.

In February 1998, President Kim Dae Jung in his inaugural address stressed the need for democracy and economic development to be pursued simultaneously. This is obviously a reaction to the lack of democratic process in the economic system of Korea that caused its present financial turmoil. But in an earlier published article, it is asserted that the present financial turmoil in Asia did not spare countries which are considered to be democratic citing as examples Japan, Korea and Thailand. It is argued that rather than democracy, it is accountability that is needed to sustain the economic progress enjoyed for several decades by those countries now suffering from financial turmoil. See Asad Latif, “Accountability, not democracy, is key,” *Japan Times*, December 22, 1997. One may ask, therefore, whether countries lacking in transparency, accountability and access to information can be considered democratic when seen in the context of definition of democracy used in this paper. It is logical to conclude that these countries are not fully democratic since the principles of transparency, ac-

countability and access to information, among others, are basic elements of a democratic system.

The latest word on this debate comes from a forum organized by the World Bank and the Asian Development Bank held in Manila in March 1998 where some economic experts said that the investment of the Philippines in putting in place democratic systems have helped the country weather the current financial crisis in Asia. They then urged other countries in the region to hasten democratic reforms. This report is the latest on the democracy and development argument. See "Democracy, investor confidence linked," *Japan Times*, March 12, 1998.

Text taken from endnote number 3 of Jefferson R. Plantilla and Masaki Yokoyama, "Development and Democracy: Philippines' Quest for the Next Century - A Study of Social Development, Human Rights and CALABARZON," *HURIGHTS OSAKA Occasional Papers Series 2* (Osaka: Asia-Pacific Human Rights Information Center, 1998), page 66.

5 Asian Cultural Forum on Development, *Our Voice—Bangkok NGO Declaration on Human Rights* (Bangkok: ACFOD, 1993), page 99.

6 This document is formally entitled "Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights." See A/CONF.157/ASRM/8 A/CONF.157/PC/59, 7 April 1993. Full text of the document available at www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/9d23b88f115fb827802569030037ed44?Op=endocument.

7 ASEAN, Joint Communiqué at the 26th ASEAN Ministerial Meeting (AMM) in Singapore, 23-24 July 1993, page 3.

8 Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand.

9 The following countries sent representatives to the conference: Afghanistan, Bahrain, Bangladesh, Brunei, Cambodia, Democratic People's Republic of Korea, India, Indonesia, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, Lebanon, Laos, Malaysia, Myanmar, Nepal, Oman, Pakistan, State of Palestine, the Philippines, Qatar, Saudi Arabia, Singapore, Sri Lanka, Syria, Thailand, Timor Leste, Turkmenistan, United Arab Emirates, Uzbekistan, Vietnam, and Yemen. See report on the conference at www.namchrcd.com/Articles/tabid/73/Default.aspx.

10 See full text of the Tehran Declaration and Programme of Action on Human Rights and Cultural Diversity at www.namchrcd.com/TehranDeclarationandProgramofAction.aspx

11 Cambodia, China, Laos, Myanmar, Thailand and Vietnam.

12 ASEAN has adopted by 2004 a plan to establish an ASEAN commission on the promotion and protection of the rights of women and children under its Vientiane Action Programme 2004-2010 (VAP). See TOR AICHR, page 1.

13 A/C.3/66/L.31/Rev.1 11, November 2011, available at www.un.org/en/ga/third/66/proposals/status.shtml.

14 During the deliberation of the draft of this resolution at the Third Committee, one step before the UN General Assembly adopted it, a concern was raised on its impact on VDPA. The report states:

The representative of Switzerland said it was satisfied to join in the consensus [that approved the draft resolution], but would like to express concern that certain aspects of the resolution could be interpreted as calling into question what was achieved in the Vienna Declaration and Programme of Action. All human rights were interdependent and should receive equal emphasis, so Switzerland had difficulty recognizing the resolution's emphasis on the right to development.

"Third Committee Approves Resolution Recommending Adoption of United Nations Declaration on Human Rights Education and Training - Other Texts Address Volunteers, Racist Practices, Mercenaries, Covenants, Indivisible Nature of Human Rights, Equitable World Order, African Institute," Sixty-sixth General Assembly, Third Committee, 45th Meeting (PM) 17 November 2011, General Assembly, GA/SHC/4030, in www.un.org/News/Press/docs/2011/gashc4030.doc.htm.

15 This section draws largely from the author's *Commentary on the Presentations on Conflict between Traditional Values and International Human Rights Standards*, presented at the symposium entitled "Conflict between Asian Values and International Human Rights Standards: The Case of Northeast Asia" on 13 March 2010 in Osaka organized jointly by the Osaka University Center for Excellence Program and HURIGHTS OSAKA.

16 See Jefferson Plantilla, "Elusive Promise: Transitional Justice in the Philippines," *Human Rights Dialogue* 1.8 (Spring 1997), available at www.carnegiecouncil.org/resources/publications/dialogue/1_08/articles/553.html.

17 This is based on the presentation of Professor Kim Eun-Shil of the Department of Women's Studies, Ewha Woman's University (Seoul) on the history of the human rights movement in Korea and the question raised on the treatment of minority issues as human rights issues. The presentation was made during the symposium entitled "Conflict between Asian Values and International Human Rights Standards: The Case of Northeast Asia."

18 Maria Serena Diokno, "Once Again: The Asian Values Debate," in Michael Jacobsen and Ole Braunn, *Human Rights and Asian Values* (Surrey: Curzon Press), page 87.

19 Visit HURIGHTS OSAKA website for the full text of this declaration, www.hurights.or.jp/archives/other_documents/section1/1983/03/declaration-of-the-basic-duties-of-asean-peoples-and-governments.html.

20 Later in the same decade, in 1989, jurists in the Pacific drafted their own human rights charter to reflect the relations between human rights and the Pacific culture, political and social systems, and economic situation. See Draft Pacific Charter of Human Rights, in www.hurights.or.jp/archives/other_documents/section1/1989/03/draft-pacific-charter-of-human-rights.html.

21 At the international level, a series of world conferences occurred in the 1990s that further refined human rights in relation to many issues of global significance. From 1990 in Jomtien on education and in New York on children, to 1992 in Rio on development and environment, to 1993 in Vienna on human rights, to 1994 in Cairo on population and development, to 1995 in Beijing on women, to 1996 in Istanbul on human settlement, all have human rights provisions for each of the

specific issues. The conference declarations that were adopted were important statements on how human rights should apply to particular issues.

22 Harro von Senger, "Chinese Culture and Human Rights," in Wolfgang Schmale, editor, *Human Rights and Cultural Diversity—Europe, Arabic-Islamic World, Africa and China* (Goldbach: Keip Publishing, 1993), pages 286-293.

23 Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: Pennsylvania Studies in Human Rights, 1999), page xiv.

24 Mahatma Gandhi, "A Letter Addressed to the Director-General of UNESCO," in United Nations Educational, Scientific and Cultural Organization, editor, *A Collective Approach to the Problem of Human Rights* (Provisional Manuscript), (Paris: UNESCO, 1948).

25 Sebasti L. Raj, "Human Rights and Indian Cultural Values," in Jefferson R. Plantilla and Sebasti L. Raj, SJ, editors, *Human Rights in Asian Cultures—Continuity and Change* (Delhi/Osaka: Asia-Pacific Human Rights Information Center, 1997), page 50.

26 Justice J.S. Verma, "Human Rights Redefined: The New Universe of Human Rights," *Journal of the NHRC*, Vol. 1, 2002, 2.

27 University Grants Commission, XI Plan Guidelines for Human Rights Education (Delhi, University Grants Commission undated), pages 2-3.

28 Wesumperuma and R. P. Berndt, editors, *Religion and Culture in the Development of Human Rights in Sri Lanka* (Colombo: Sri Lanka Foundation, 1982) page x.

29 The book is entitled *Human Rights and Religions in Sri Lanka—A Commentary on the Universal Declaration of Human Rights*, published by the Sri Lanka Foundation in 1988.

30 Sri Lanka Foundation, *Human Rights and Religions in Sri Lanka—A Commentary on the Universal Declaration of Human Rights* (Colombo: Sri Lanka Foundation, 1988), pages x-xi.

31 *Ibid.*, page 279.

32 Ta Van Tai, *The Vietnamese Tradition of Human Rights* (Berkeley: Institute of East Asian Studies, University of California Berkeley, 1988), page 45.

33 Thun Saray, editor, *Human Rights Through Khmer Culture* (Phnom Penh: Cambodia Human Rights and Development Association, 1997).

34 John Humphrey was the representative of the UN Secretariat to the Commission on Human Rights. He was the Director of the Human Rights Division in the Secretariat's Department of Social Affairs. (See www.udhr.org/history/Biographies/biojh.htm)

35 Morsink (op. cit, page 30) took this citation from *John Humphrey, Human Rights and the United Nations: A Great Adventure* (New York: Transnational, 1984) page 23.

36 Morsink, op. cit., page 21.

37 The discussion here of approaches to linking cultures to human rights complements similar discussion viewed from an international perspective in "Human Rights and Cultural Values: A Literature Review," in Plantilla and Raj, op. cit.

38 Ben Hoyle, "Ancient bill of rights has a message for Tehran," *The Times*, 24 April 2011.

39 Shapour Suren-Pahlav, *Cyrus The Great's* [sic] *Cylinder - The World's First Charter of the Human Rights*, text available at www.cais-soas.com/CAIS/History/hakhmaneshian/Cyrus-the-great/cyrus_cylinder.htm. A complete translation of the text of the cylinder is available at the British Museum website: www.britishmuseum.org/explore/highlights/article_index/c/cyrus_cylinder_-_translation.aspx.

40 Sri Lanka Foundation, op. cit., pages 115-116.

41 Ibid., page 60.

42 Dao Tri Uc, "Basic Information for Legal Research - A Case Study of Vietnam," in *Doing Legal Research in Asian Countries* (Tokyo: Institute of Developing Economies) pages 204-205.

43 Ibid., page 203.

44 See Ta Van Tai, op. cit.

45 The text of the True Decalogue cited here is from a translation from Tagalog language by Randy David, "On being Filipino," *Philippine Daily Inquirer*, 13 June 2009, available at <http://opinion.inquirer.net/inquireropinion/columns/view/20090613-210237/On-being-Filipino>.

46 Jose Pereira, editor, *Hindu Theology—Themes, Texts and Structures* (Delhi: Motilal Benarsidass Publishers Pvt. Ltd., 1976) pages 374-375.

47 Buraku Liberation and Human Rights Research Institute, *The Declaration and General Principles of the Suiheisha* (Levelers Association) (Osaka: Buraku Liberation and Human Rights Research Institute, 2002).

48 Vo Van Ai, "Human Rights and Asian Values in Vietnam," in Michael Jacobsen and Ole Brauun, *Human Rights and Asian Values* (Surrey: Curzon Press, 2000), page 93.

49 Robert Traer, *Faith in Human Rights: Support in Religious Traditions for a Global Struggle* (Washington, D.C.: Georgetown University Press, 1991), page 158.

50 Diego II Quejada and Romelino Obinario, "Cultural Values and Human Rights: The Philippine Perspective," in Plantilla and Raj, op. cit., pages 192-195.

51 Binai Srinivasan, "Culture, Women and Human Rights," in Plantilla and Raj, op. cit., page 128.

52 Thun, op. cit., page 26.

53 Proserpina Domingo-Tapales, editor, *Filipino Women and Public Policy* (Manila: University Center for Women's Studies, University of the Philippines, 1992), page 13 cited in Quejada and Obinario, op. cit., page 195.

54 Quejada and Obinario, op. cit., pages 195-196; Srinivasan, op. cit., pages 107-121.

55 For a discussion on how cultural values relate to several countries in Asia, see Plantilla and Raj, op. cit.

56 New Zealand Law Commission, "Converging Currents: Custom and Human Rights in the Pacific," *FOCUS Asia-Pacific*, December 2006 Volume 46, 8. Also available at www.hurights.or.jp/archives/focus/section2/2006/12/converging-currents-custom-and-human-rights-in-the-pacific.html. For a full discussion of the convergence between Pacific customs and human rights, see Law Commission, *Converging*

Currents: Custom and Human Rights in the Pacific (Wellington: Law Commission, 2006).

57 *Ibid.*, pages 8-9.

58 Raj, *op. cit.*, page 53.

59 Sasanka Perera, "Human Rights and the Buddhist Ethics in Sri Lanka," in Plantilla and Raj, *op. cit.*, page 160.

60 De Bary, *op. cit.*, page 10.

61 *Ibid.*, pages 155-156, 157.

62 Chung-ying Cheng, "Transforming Confucian Virtues into Human Rights: A Study of Human Agency and Potency in Confucian Ethics," in Wm. Theodore de Bary and Tu Weiming, *Confucianism and Human Rights* (New York: Columbia University Press, 1998), page 151.

63 Kinhide Mushakoji, "Japan and Cultural Development in East Asia: Possibilities of a New Human Rights Culture," in Plantilla and Raj, *op. cit.*, page 306.

64 *Ibid.*, page 304.

65 Yubaraj Sangroula, *Concepts and Evolution of Human Rights: Nepalese Perspective* (Kathmandu: Kathmandu School of Law, 2005), page 26.

66 Rig Veda or Rg Veda is the first and earliest of the four Vedas, the foundational scriptures of Hinduism. Taken from Arvind Sharma, *Hinduism and Human Rights* (New Delhi: Oxford University Press, 2004), page 204.

67 Sangroula, *op. cit.*, page 83.

68 Arvind Sharma, *Hinduism and Human Rights* (New Delhi: Oxford University Press, 2004), pages 65-66.

69 Varna denotes one of the classes constituting the four-fold classification of society in Hinduism into *Brahmanas*, *Ksatriyas*, *Vaisyas*, and *Sudras*. Sharma, *ibid.*, page 205.

70 Jati means a group to which one belongs by birth, such birth often determining the nature of one's occupation and the social circle to which one belongs. Sharma, *ibid.*, page 200.

71 Vo, *op. cit.*, page 103.

72 Salbiah Ahmad, "Islamic Law and Women's Rights," in Jefferson R. Plantilla and Salbiah Ahmad, editors, *Law, Jurisprudence and Human Rights* (Kuala Lumpur: SIRD and HURIGHTS OSAKA, 2011), page 325.

73 *Ibid.*

74 As cited by Ahmad on page 317. Citation of sources deleted.

75 *Ibid.*, page 314.

76 *Ibid.*, page 315.

77 Vo, *op. cit.*, page 105.

78 ASEAN Political-Security Community Blueprint (Jakarta: ASEAN, 2009) page 2. Text available at www.aseansec.org/18741.htm.

79 *Ibid.*, page 6.

80 Text available at www.aseansec.org/22769.htm.

81 ASEAN, Terms of Reference of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (Jakarta: ASEAN, 2010), page 2. Text available at www.asean.org/ACWC.htm.

82 United Nations Office of the High Commissioner for Human Rights, "Seventh Official Meeting of the ASEAN Intergovernmental Commission on Human Rights Address by the United Nations High Commissioner for Human Rights," 28 November 2011, www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11651&LangID=e.

83 Statement of the 4th Regional Consultation of ASEAN and Human Rights, Bali, Indonesia, 27-29 November 2011, text available at www.forum-asia.org/?p=11769.

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85 Hoyle, op. cit.

86 C.O. Khong, "Asian Values: The Debate Revisited," Proceedings of the First Shizuoka Asia-Pacific Forum: The Future of the Asia-Pacific Region, 28 March 1997, Shizuoka, Japan, text available at <http://archive.unu.edu/unupress/asian-values.html>.

87 See Jefferson R. Plantilla, editor, *Educational Policies and Human Rights Awareness—Japan, India, the Philippines and Sri Lanka* (Delhi: Academic Excellence, 2008).

88 Lolita H. Nava, Zenaida Q. Reyes, Maria Carmela T. Mancao, Maria Victoria C. Hermosisima, and Felicia I. Yeban, *Human Rights Education in Philippine Schools: Analysis of Education Policies and Survey of Human Rights Awareness* (Manila: Philippine Normal University, 2006), page 78.

89 This author once visited a school in Mumbai, India where a non-governmental organization (NGO) implemented an education program. When a staff was asked if the NGO was doing human rights education, the answer was in the negative. The NGO staff said the NGO was doing child rights education. What really is the difference between human rights education and child rights education? None, except that the latter was likely more acceptable to educators in general.

90 See Plantilla and Raj, 1997, op. cit.

91 See Final Document of the Conference-Workshop on Asia-Pacific Human Rights Education for Development (Manila, Philippines, December 15, 1995. Text available at www.hurights.or.jp/archives/other_documents/section1/1995/03/final-document-of-the-conference-workshop-on-asia-pacific-human-rights-education-for-development.html.

92 See discussion on this topic in *Dialogue on Human Rights Education* in www.hurights.or.jp/archives/focus/section2/2001/03/dialogue-on-human-rights-education.html.

93 See for example the education programs of the UNESCO-affiliated Asia-Pacific Centre of Education for International Understanding. By and large, human rights are included in these programs.

94 A survey of HURIGHTS OSAKA reveals that the internet is a poor source of human rights information whether in a country with highly developed and pervasive internet infrastructure (specifically, Japan) or in countries with less developed infrastructures (such as India and the Philippines). It seems that the internet has not been attractive enough for the young people to get the human rights information they need. See Plantilla, 2008, op. cit., page 246.