



## Editorial

### Turning 50

On December 10, 1998, the Universal Declaration of Human Rights will be celebrating its golden age of 50. This is what is traditionally said on any 50th anniversary. But human rights being a much more serious matter, the question is: must there be any celebration to be held?

The present UN High Commissioner for Human Rights, Ms. Mary Robinson, describes the UDHR in 1948 as embodying "...the hopes and even dreams of people still scarred from two world wars, newly fearful of the Cold War and just beginning the great liberation of peoples which came about with the dismantling of the European empires."

Fifty years later, the world is still mired in conditions that prevent the human rights of all from being protected and realized.

But changes have taken place also that make 1998 a much different year from 1948. Significant events have led to a clearer understanding of the whole meaning of the UDHR as they apply to peoples of different situations in different parts of the world. The word "people" has come to mean human beings with varying needs and yet aspiring for the same goal of living in peace with food, freedom and justice.

With a rapidly changing world, the 50th anniversary of the UDHR is an opportunity for thinking about more creative and effective ways of ensuring that human rights will not remain a hope or a dream for the many peoples in this world who are deprived, marginalized and forgotten.

FOCUS Asia-Pacific is designed by HURIGHTS OSAKA as a means of highlighting significant issues and activities relating to human rights in the Asia-Pacific. Relevant information and articles can be sent to HURIGHTS OSAKA for inclusion in the next editions of the newsletter.

FOCUS Asia-Pacific is edited by Dong-hoon Kim, Director of HURIGHTS OSAKA.

# **The Spirit of Our Age and the Realities of Our Time: Vienna Five Years Later**

Clarence J. Dias

International Center for Law in Development

## **Recalling Vienna**

The U.N. World Conference on Human Rights (held in Vienna) brought together some 7,000 participants comprising government delegates, academics, representatives of treaty-bodies, of national institutions and of more than 800 non-governmental organizations (NGOs)--two-thirds of them working at the grassroots level--(i) to review and assess progress made in the field of human rights since the adoption of the Universal Declaration of Human Rights; and (ii) to identify obstacles and ways in which they might be overcome. The Vienna Declaration and Programme of Action (hereafter termed the Vienna Declaration) presented to the international community a common plan for the strengthening of human rights work around the world. In a message to the Conference, the then UN Secretary-General, Boutros Boutros-Ghali, saluted the meeting for having forged, "a new vision for global action for human rights into the next century".

The Vienna Declaration recommended that the UN Commission on Human Rights annually review the progress towards full implementation of the recommendations contained therein. It also asked the Secretary-General of the UN to invite all States, all organs and agencies of the UN system related to human rights, regional and, as appropriate, national human rights institutions as well as non-governmental organizations, to report to him on progress made in the implementation of the Vienna Declaration on the occasion of the 50th Anniversary of the Universal Declaration on Human Rights (in 1998). The Vienna Declaration also requests the Secretary-General of the UN to submit his report on the implementation of the Declaration "to the General Assembly at its fifty-third session, through the Commission on Human Rights and the Economic and Social Commission".

Each of the UN Global Conferences from Rio onwards, envisages a major five-year review. Indeed, the Rio + 5 review (popularly termed Earth Summit II) has concluded only very recently. Earth Summit II is the first global summit so far, which has failed to reach agreement on a final statement and there has been criticism of an unraveling of the consensus reached in Agenda 21 during the Summit and its preparatory process. This cannot be allowed to happen regarding the Vienna Declaration and Programme of Action. At Vienna, through an arduous process of negotiations, consensus was forged that:

- All human rights are universal, indivisible and interdependent and interrelated.
- The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights.
- The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular, the purpose of



international cooperation.

- Enhancement of international cooperation in the field of human rights is essential for the full achievement of the purposes of the United Nations.
- Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.

It is vital that the Vienna review reiterates the above consensus and treats it as not open for renegotiation. The role of NGOs, worldwide, is crucial to ensure this. It must be clear that what is not up for review is the consensus reached at Vienna. What is up for review includes:

- States performance in meeting their obligations under the Vienna Declaration.
- Progress towards the full implementation of the recommendations contained in the Vienna Declaration.
- The performance of the United Nations system in assuming a more active role in the promotion and protection of human rights as recommended by the Vienna Declaration.

## **Reviewing Vienna: States Performance**

States have made several commitments and undertaken various duties and obligations under the Vienna Declaration. These include:

### **1. Duties to Eliminate Certain Practices Violative of Human Rights such as:**

- racism, racial discrimination, xenophobia and related intolerance (Section I para 15);
- apartheid (Section I para 16);
- terrorism and drug trafficking (Section I para 17);
- genocide, ethnic cleansing (Section I para 28);
- systematic rape of women in war situations (Section I para 28);
- violations of human rights affecting the civilian population during armed conflicts (Section I para 29);
- gross and systematic violations such as torture and cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, disappearances, arbitrary detentions, foreign occupation and alien

domination, poverty, hunger and other denials of economic, social and cultural rights, religious intolerance, discrimination against women and lack of the rule of law (Section I para 30).

Regarding three of the above practices, racism, torture and enforced disappearances, States have undertaken certain specific obligations under the Vienna Declaration as well.

So far as racism, racial discrimination, xenophobia and other forms of intolerance are concerned, the World Conference appeals to all State-Parties to consider making the declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals claiming to be victims of a violation by that State Party of any of the rights under the Convention. The World Conference also invites all States to put into practice the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and urges all governments to enact appropriate legislation, including penal measures, and to establish national institutions to combat racism, xenophobia and intolerance. The World Conference further calls on all States to take immediate measures to combat the practice of ethnic cleansing and to hold individually responsible and accountable, all persons who perpetrate or authorize criminal acts associated with ethnic cleansing.

So far as torture is concerned, the World Conference encourages the speedy ratification of the Convention on Torture and calls upon all States to cooperate fully with the Special Rapporteur on the question of torture. States are called upon to give universal respect for, and effective implementation of, the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations. The Vienna Declaration also requires that "States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture, and prosecute such violations".

So far as enforced disappearances are concerned, the World Conference welcomes the General Assembly Declaration on the Protection of All Persons from Enforced Disappearance and calls upon all States to take effective legislative, judicial and other measures to prevent, terminate and punish such acts and reaffirms that "it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction".

Countries should report on the steps they have taken to eliminate these practices and NGOs could monitor State performance regarding these practices.

## **2. Duties Regarding the Universal Ratification of Human Rights Treaties.**

The World Conference urged the universal ratification of human rights treaties and encouraged all States to accede to these treaties, and to avoid, as far as possible, the resort to reservations. It strongly recommended that a concerted effort be made to encourage and facilitate ratification of such treaties and protocols with the aim of universal acceptance. In consultation with the treaty bodies, the Secretary-General was urged by the World Conference to consider opening a dialogue with States not having acceded to these human rights treaties in order to identify obstacles and to seek ways of overcoming them. The year 1995 was set as the goal for universal ratification of the Convention on the Rights of the Child and the year 2000 for the goal of universal ratification of the Convention on Elimination of All Forms of Discrimination Against Women.

So far as reservations are concerned, the World Conference encourages States to limit the extent of any reservation they make and formulate any reservation as precisely and narrowly as possible, ensuring that no such reservation is incompatible with the object and purpose of the relevant treaty. States should also, regularly, review any reservations with a view to withdrawing them.

Countries should present, in their national reports, the progress they have made since Vienna regarding the ratification of human rights instruments and regarding their incorporation into national law. They should also provide details of any reservations they might have made and the reasons for such reservations.

## **3. Commitments Regarding National Human Rights Institutions.**

The Vienna Declaration stresses that States should eliminate all violations of human rights and their causes, as well as obstacles to the enjoyment of those rights. There is a need for States and international organizations, in cooperation with non-governmental organizations, to create favorable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights.

Creating favorable conditions at the national level involves at least three key aspects:

-- Every State should provide an effective framework of remedies to redress human rights grievances or violations. This requires an independent judiciary and legal profession and a system of administration of justice (including law enforcement and prosecutorial agencies) that are in full conformity with applicable standards contained in international human rights instruments.

-- Recognizing the important role of non-governmental organizations in the promotion and protection of human rights, non-governmental organizations should be free to carry out their human rights activities without interference within the framework of national law and the Universal Declaration of Human Rights.

-- Establishment and strengthening of national legislation and national institutions. The World Conference reaffirmed the important and constructive role played by national human rights institutions, in particular, in their

advisory capacity to the competent authorities, their role in remedying human rights violations, in dissemination of human rights information, and education in human rights.



Countries should report on their national human right institutions and NGOs can provide an evaluation of the performance of such institutions.

#### 4. Protection and Promotion of the Rights of Special Groups.

The Vienna Declaration calls attention to several groups whose human rights protection and promotion warrant special attention for a variety of reasons. These groups include:

- people under foreign occupation for whom "effective international measures to guarantee and monitor the implementation of human rights standards should be taken " and "effective legal protection against the violation of their human rights should be provided";
- women and the girl-child against whom "gender-based violence and all forms of sexual harassment and exploitation" and "all forms of discrimination on grounds of sex" must be eradicated. "The full and equal participation of women in political, civil, economic, social and cultural life" must be secured;
- minorities, "the promotion and protection of whose rights" contribute "to the political and social stability of the States in which such persons live";
- indigenous people whose "unique contribution" "to the development and plurality of society is recognized", "States should ensure the full and free participation of indigenous people in all aspects of society";
- children whose rights "should be a priority in the United Nations system-wide action on human rights";
- disabled persons whose "active participation in all aspects of society" and "equal enjoyment of all human rights and fundamental freedoms" should be secured;
- refugees who are entitled "to the right to seek asylum from persecution as well as the right to return to one's own country";

-- internally-displaced persons whose "voluntary and safe return and rehabilitation" should be ensured;

-- victims of all natural and man-made disasters whose right to humanitarian assistance should be respected;

-- persons belonging to groups which have been rendered vulnerable including migrant workers who are entitled to "the elimination of all forms of discrimination against them" and to "the promotion and protection" of their rights;

-- trade unions. The World Conference supports all measures by the UN and its specialized agencies to ensure the effective promotion and protection of the rights of trade unions and calls upon all States to abide fully by their obligations in this regard;

-- the media for whom freedom and protection should be guaranteed within the framework of national law because of the importance of objective, responsible and impartial information about human rights and humanitarian issues.

Countries, in their national reports for the Vienna + 5 review, should include sections dealing with each of the above special groups and the fulfillment of the State's obligations towards them.

#### 5. Reaffirmation of Human Rights Priorities

The Vienna Declaration singles out four human rights for special recognition and attention:

- All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development.
- The World Conference reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.
- The human rights of women should be integrated into the mainstream of United Nations system-wide activity. The World Conference urges the full and equal enjoyment by women of all human rights and that this be a priority for governments and for the United Nations.
- Everyone has the right to enjoy the benefits of scientific progress and its applications.

Each national report should include a section on each of these four rights, describing both progress and obstacles and indicating, where appropriate, its need for advisory services and technical assistance to better realize that right.

The five clusters set out above reflect the priorities contained in the Vienna Declaration. It is entirely appropriate, therefore, that they form the basis for the content of national reports prepared by governments or by NGOs for the purpose of the Vienna + 5 review.

(To be continued)

# Regional Protection of Human Rights in Asia

Vitit Munthanbhorn

*(This is the second part of the excerpt of the Summary of Lectures delivered by Prof. Munthanbhorn at the International Institute of Human Rights, Strasbourg, France in July 1997. - Editor's note.)*

The national level is the most crucial area for human rights enforcement and accountability. To what extent do national machineries or mechanisms exist for the protection of human rights? Do they link up between different countries? Could such "networking" ultimately provide a rationale for a more formal inter-governmental human rights system for the Asian region?

## i) Concerns

All countries have, to a greater or lesser extent, some machinery which can be used to protect human rights. The judiciary is a case in point. However, such machinery is often too slow, too expensive and too inaccessible to the greater part of the public. A pervasive problem facing law enforcers as a whole is the presence of corruption and collusion which weaken the existing machineries which could otherwise be used to protect human rights.

Moreover, existing machineries often take a parochial attitude towards rights; many tend to protect what is guaranteed by national laws and constitutions rather than internationally espoused human rights. A classic example is the protection of refugees. While many national machineries in Asia tend to classify them according to national law as "illegal immigrants" without the right not to be pushed back across the frontier if dangers lurk for their safety, the international perspective demands that they be treated humanely, thereby not being subjected to push-backs into areas of danger, namely the international principle of "non-refoulement".

Such machineries suffer, particularly in undemocratic systems, from lack of independence, or "token independence". Precisely because they are often controlled by the ruling elite or are deferential to them, they veer towards legitimizing the existing power base rather than impugning their actions. They also tend to be topdown in terms of representation, and are not pluralistic enough in their composition. There are, for instance, too few women in the decision-making positions of such machineries. There is usually also a paucity of representatives of the poor, the dispossessed, minorities and indigenous communities, and other marginalized groups.

Much can thus be done to improve existing machineries to make them more accessible to the people, more democratic, more transparent, more independent and more pluralistic. The notions of independence, accessibility and pluralism are supported by various international guidelines known as the Paris Principles concerning national institutions for promotion and protection of human rights 1991, and they should apply equally to existing machineries and future machineries for human rights protection at the national level.

However, they may need bolstering from institutions which are more human rights specific and which lend a helping hand where traditional machineries are unable to do so or are ineffective in doing so.

## ii) Projects

In this light, it is of interest to note the rise of various institutions or machineries to address specifically human rights issues at the national level with the blessing of the government. Currently, the Philippines, India and Indonesia have National Human Rights Commissions with a specific and independent mandate on human rights promotion and protection (on a permanent basis). Others have more piecemeal or ad hoc machineries such as parliamentary human rights committees (e.g. in Thailand and Cambodia).

Several countries are now exploring laws to establish National Human Rights Commissions on a permanent basis; these include Sri Lanka, Papua New Guinea, Nepal, Mongolia, Bangladesh and Pakistan. An Islamic Human Rights Commission has been established in Iran, although it is uncertain as to how independent it is and whether it will abide by international human rights standards or merely dilute them.

Lessons are also being shared by the older human rights institutions in the Asia-Pacific region, namely those of Australia and New Zealand, with the emerging Asian institutions.

While these Human Rights Commissions are certainly not the only machinery to be fostered, they are of particular interest at present because the existing Commissions have turned out to be more active and independent than expected. One may also be sympathetic to those which have to operate in authoritarian systems; their margin of maneuver is very limited. On the one hand, they may be looked upon warily by observers as a tool of the government. On the other hand, if they are too confrontational with the government, they may find themselves being undermined by dark forces. Therefore, much depends upon the quality, integrity and credibility of the members of these institutions to prove themselves to the national and international public that they act independently (or even as independently as possible) and are not subsumed under the tentacles of the ruling elite.

The existing Human Rights Commissions in the three Asian countries noted share some common features:

1. They have a preventive and promotional role in regard to human rights. This is seen in their extensive human rights education and information campaigns, ranging from human rights publications to training of the army and the police on human rights.

2. They have investigative powers. They can call governmental officials to give evidence and search for evidence, as well as visit places where human rights violations have taken place.

3. They do not adjudicate and give binding decisions; they are not courts. However, their findings and recommendations are highly persuasive and if well publicized, can lead to both political and legal review and reform, as well as accountability of those responsible for the human rights violations.

4. They have power to cross-refer allegations of human rights violations to the authorities that have the power to litigate or prosecute. This usually refers to public prosecutors and the courts.

5. They have a key role in mediating between the disputing parties. Often the moral weight of the national institution leads to a compromise rather than litigation in the courts. There have been numerous disputes between government officials and civilians, between companies and their employees, between those expropriating or taking over rural land and the original inhabitants, many of which have benefited from the mediatory role of the national institutions leading to settlement of the disputes.

6. Those human rights institutions that operate in a setting where the government is not democratic (and even sometimes those operating in democratic systems) prefer to avoid a confrontation with the government. However, this has not prevented them from taking a position that exerts pressure on the government to examine the conduct of its officials in terms of their accountability for human rights violations. Much can be read "between the lines" in their recommendations for governmental response to remedy human rights violations.

There have also been some surprises in the proactive nature of these institutions. For instance, the Indian Human Rights Commission has stepped into the fray to end scavenging and rehabilitate scavengers. It has also pressed for an end to various forms of child labor, especially in the glass industry, and has mobilized health inspectors to study the health situation of children in such industry. It has highlighted the plight of girl victims of sexual trafficking and prostitution.

The Indonesian Human Rights Commission has not shied away from investigating human rights violations in East Timor, even though it must have been fully aware of the slippery political slope awaiting its recommendations. In 1995, it found that various human rights violations had taken place in East Timor and advised as follows:

" The National Commission on Human Rights appreciates the professional measures taken by the security apparatus to prevent the further spread of the disturbances and to avoid more victims. The Commission believes that the government must take action against the perpetrators in accordance with existing legal regulations and must investigate the problem in order to be able to take necessary measures.

The National Commission on Human Rights is of the opinion that in order to prevent a repetition of human rights violations and to create a greater harmony among all citizens:

1. The Government must carry out a fundamental review and improve the implementation of its policies in the development of (East) Timor in order to formulate

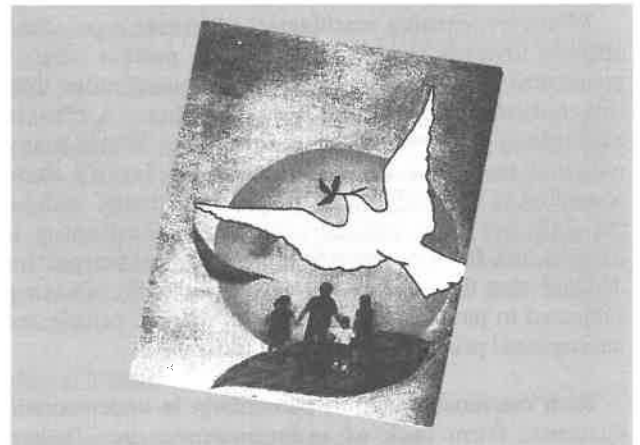
regional policies that are appropriate and relevant.

2. Real and effective efforts are needed immediately to improve coordination among Departments and institutions to prevent further confusion in the handling of problems.

3. A forum for communication among different religious communities should be established immediately for future expansion."

It has gone further to investigate violations in another problem region which is often forgotten by the international community in regard to self-determination: Irian Jaya. In 1996, it also courageously commented on the violence which surrounded the take-over of the headquarters (DPP) of the Indonesian Democratic Party (PDI) as follows:

" The July 27, 1996 take-over of the building of the Secretariat of the DPP of the PDI ... was an act accompanied by violence carried out by the DPP PDI of the Medan Congress and their supporters, and was carried out jointly with the security apparatus. It was the continuation of a series of earlier events tied to the creation of an open conflict within the PDI in which the government/security apparatus involved themselves excessively and one-sidedly and in a manner not appropriate to their functions as political guides and security apparatus."



Of course, there are limits to the operations of the Human Rights Commissions currently found in Asia. At the outset of its work, one Commission felt that it was unable or unwilling to challenge the power of government forces, especially the police and the army, in regard to human rights violations. This reticence led to slow responses and follow-up by the Commission in question, with very few cases cross-referred to the courts for adjudication. It also felt that its mandate was on civil and political rights rather than economic, social and cultural rights. However, lately, it has shifted gear and has been more willing to cross-refer cases for the prosecution of alleged perpetrators among law enforcement authorities. It has also expanded its operations to cover economic, social and cultural matters, especially in regard to child protection from abuse and exploitation, and has helped to evolve a national Human Rights Action Plan to cover a whole range of concerns including marginalized groups.

(continued on page 11)

# Japan and the 50th Anniversary of UDHR

Kenzo Tomonaga

Buraku Liberation Research Institute

## Fifty Years of Human Rights Struggle

The 50th anniversary of the UDHR is an opportune time for reviewing the accumulated experience of the past 50 years and setting a new agenda for the future.

The 50 year-long struggle for protection of human rights has brought many achievements, such as:

1. cases of gross violation of human rights and discrimination are being given attention as "matters of international concern";
2. at the UN, various human rights bodies, including the Commission on Human Rights and the Sub-Commission, are meeting regularly to deal with human rights issues in all parts of the world;
3. with an aim to concretizing the ideas of the UDHR, the UN has approved as many as 23 international conventions instrumental in eliminating discrimination and promoting human rights;
4. human rights conventions, commissions and judicial courts are being established at the regional level;
5. international human rights NGOs, such as Amnesty International and the International Movement against All Forms of Discrimination and Racism (IMADR), active in the field of human rights are increasing in number;
6. the apartheid system in South Africa had been abolished.

The achievements made are enormous. But in view of the goals envisioned in the UDHR, many issues remain unsolved. Particularly, with the collapse of the cold war structure and the ongoing process of globalization, the human race is now confronted with new challenges such as:

1. a tendency toward a laissez faire economy which multiplies the power of hyper-monopolized corporations and international financial capitals resulting in greater influence on world economy;
2. increasing gap between the rich and the poor nationally and internationally. Indigenous peoples, national minorities, people belonging to outcast groups and migrant workers, in particular, are marginalized;
3. increase in the number of global trafficking in women and children while racist trends are surging against migrant workers in developed countries;
4. less national budgets are allocated for Official Development Assistance (ODA) and social welfare in many countries;
5. ethnic conflicts are intensified in many parts of the world as a result of the above mentioned transformation;
6. religious fundamentalism and neo-Nazism are intensifying;
7. the environment is deteriorating globally.

## The case of Japan

Japan has a constitution that puts utmost value on peace, democracy and basic human rights. This constitution was drafted in repentance of the wrongs done during the World War II and entered into force on May 3, 1947. Basic ideas embodied in the constitution are identical with the UDHR.

In June 1979, Japan ratified the International Covenants - the world constitution of human rights. In subsequent years the government also acceded to the Convention Relating to the Status of Refugees, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the International Convention on the Elimination of All Forms of Discrimination (CERD). The process was slow and delayed but by signing these conventions Japan joined the international human rights community.

Accession to the regime of human rights treaties meant for Japan a great leap forward in a sense that by this the Constitution of Japan was enriched and that the government finally took a course for building a society free from discrimination and human rights violations, in partnership with international organizations. Meanwhile, the Asia-Pacific Human Rights Information Center was established in Osaka in December 1994, the role of which is to contribute to the improvement of human rights conditions both in Japan and in the Asia-Pacific region.

However, Japan's performance in ratifying human rights treaties is far from satisfactory. For instance, the government has neither accepted the First Optional Protocol to the International Covenant which allows individual communication nor the Second Optional Protocol which prohibits capital punishment. In addition, Japan announced reservations with Article 4, Section (a) and (b) of the CERD which stipulated the banning of incitement to racial hatred.

Another shortcoming is the failure to live up to the Provisions of the human rights conventions, including the International Covenants. The Japanese Constitution requires in Section 2 of Article 98 that the international treaties ratified by Japan should be faithfully complied with. They assume second importance to the constitution.

Nevertheless, the article is not fully respected either at national and local government levels, or by the judicial bodies. For instance, in the Sayama Retrial Case, involving an innocent Buraku person, despite the defense lawyers' demand for full disclosure of all evidences possessed by the prosecutors, this plea had been repeatedly turned down. This apparently contradicts the articles stipulated in the International Covenants. Laws incompatible with human rights treaties are not revised or amended in Japan. For example, the existing civil law allows a child born out of wedlock to inherit only half of the fortune inherited by a legitimate child. Obviously this is a violation of the relevant article of the International Covenants. Regarding the prohibition of the propaganda of wars and incitement to racial hatred as stipulated in the International Covenants, Japan has no appropriate laws for this purpose.

## Current human rights issues

In the midst of mega-competition, Japan is now



witnessing the deterioration of human rights conditions against a background of social problems such as rampant bankruptcy, corporate restructuring, welfare cuts, and the rise of ethnocentrism. Many human rights issues remain unresolved, such as the following:

1. although the living conditions of Buraku communities are improving, a gap still exists in the fields of employment and education. Discriminatory attitudes toward Buraku people persist, resulting in a number of discriminatory incidents;
2. foreign residents do not fully enjoy equal treatment, particularly for the Korean residents. They suffer from disadvantageous treatment as far as housing, employment, education, social security and voting are concerned. The right to education on their own culture and language is also not guaranteed;
3. despite the legislation of the new Ainu Cultural Promotion Law, Ainu people are not given rights as indigenous people and are not treated equally in daily affairs, in the workplace, and in schools;
4. cases of sexual harassment and violence against women are increasing in number. Discriminatory practices are still prevalent in workplaces and society in general. Women are sometimes excluded in the decision-making processes;
5. the rights of children are threatened by abuses, corporal punishment, prostitution inflicted by adults, and bullying in schools.
6. the rights of the elderly population remain seriously threatened due to lack of adequate medical and social welfare services;
7. full participation and equality of persons with disability have not yet been fulfilled. Discrimination in education and employment is still continuing. Violence against mentally disabled persons and illegal appropriation of their properties are reported in hospitals, residence facilities and workplaces;
8. biased attitude against persons with Hansen's disease and HIV/AIDS persists; and
9. cases of forced eviction of street people occur many times.

#### **Possible measures to resolve the problems**

On December 15, 1995, the Cabinet decided to set up the Promotion Council for the UN Decade for Human Rights Education. The Council is chaired by the Prime Minister, vice-chaired by the Cabinet Chief Secretary and 4 other ministers. It also designated vice-ministers of 22 ministries and government agencies as senior staff. Virtually covering every section of the government, it is an epoch-making experiment in Japan's history on human rights education.

On July 4, 1997, the Council announced the National Plan of Action for Human Rights Education. Under this plan, special attention is given to the promotion of human rights education not only in schools but also in private corporations and in civil society in general, and to the provision of human rights curricula for persons in specific professions such as public servants, teachers, policemen/women, personnel of the Self Defense Forces, persons in medical services, social care workers and journalists.

The plan highlights the rights of women, children, the aged, persons with disability, Buraku people, the Ainu,

foreigners, persons with HIV/AIDS and persons who had served prison terms. It also emphasizes the need to contribute to the work of the UN and to provide assistance on the human rights education work in developing countries.

At the prefectural level, the prefectural governments of Osaka, Mie, Fukuoka, Shiga, Nagasaki, Kumamoto and other prefectures and cities have also established offices chaired by governors and mayors that will draft their own action plans. Further efforts should be made so that more local governments are encouraged to set up focal points and initiate action plans.

Meanwhile, there is an increasing number of local governments adopting ordinances and declarations relevant to the elimination of Buraku discrimination. As of November 1997, 914 declarations and 529 ordinances have been adopted.

Considering decentralization as a catchword of the time, these declarations and ordinances can contribute to building local communities where human rights are guaranteed. These ordinances and declarations must be put into practice. At the same time, local governments which have not yet adopted such ordinances and declarations are strongly encouraged to do so during the 50th UDHR anniversary year.

In December 1996, the Law on Promotion of Measures for Human Rights Protection was enacted as a direct result of efforts by the Central Executive Committee of the National Movement for the Enactment of the Fundamental Law for Buraku Liberation, and other concerned organizations. This law is an important tool to effectively eradicate the causes of discrimination and to promote human rights. With this law being enforced, the government now bears a clear responsibility for the promotion of human rights education and relief for victims of human rights violations.

The Council for Human Rights Protection was established in May 1997 as mandated by this law. The Council is commissioned to file a report on human rights education in two years, as well as to compile a report for the relief measures for victims of human rights violations within 5 years. As clearly stated in the resolutions passed by the Committees on Judicial affairs of both Houses of the parliament, the government is required to enact the necessary legislation that ensures adequate human rights education and relief measures.

The implementation of this law means the concretization of the ideas embodied in Article 14 of the Japanese Constitution as well as in the relevant human rights conventions ratified by Japan.

In consideration of this, many minority groups, together with leaders from various sectors, agreed to create a new organization named Human Rights Forum 21, which aims to propose policies in relation to this law. Establishing close relations with this Forum is important in meeting the challenges mentioned above.

With the 50th anniversary of the UDHR, more efforts are needed to create and implement imaginative activities to realize a truly humane century.



# The Contending Discourses on Women in Iran

Farideh Farhi

Tehran, Iran

Writing about the situation of Muslim women continues to be a hazardous task. Caught between an international discursive struggle, at times portrayed as a clash of civilizations and at other times as simply a matter of human rights, the Muslim woman's complete identification with the culture in which she is embedded and expected to represent, by both insiders and outsiders, has always been troublesome for her. In many ways, she stands dazed and even confused as she is called upon either to defend or reject with absolute certainty the terms of a contested terrain that she herself has had very little to do in their creation. And once she speaks, no matter how hard she tries to voice the complexities, variety of experiences, and messiness of her life, hell breaks loose. Insiders will accuse her of treason, abandoning Islam, and ultimately her native soul, while outsiders see either collusion, compromise, and even ignorance or her rightful rejection of an oppressive traditionalist culture.

The problem is further complicated for an Iranian Muslim woman. Her arena of maneuver has become so politicized that even a small squeak on her behalf will be immediately interpreted, reinterpreted, and turned into a sign post for something much bigger and more severe than a simple desire to lead a decent life as a human being. A lock of hair showing is perceived by outsiders as a sign of rejection of the whole Islamic Republic while a simple bicycle ride (not forbidden by law) can easily turn into a full-fledged internal debate about cultural invasion. This is why words must be chosen carefully since the path crossed is a sensitive or even dangerous one.

Having begun with this caveat, it is also important to reiterate that the story of Iranian women and their relationship to the Islamic state is very much intertwined with the story of the revolution and understanding this dynamic will tell us much about the dynamics of the revolution itself, the stages it has gone through, and the development trajectory it has more or less settled upon. In this paper I will attempt to lay out these stages, pointing to the complex metamorphosis of the women question vis-a-vis the Islamic state. I will end the discussion by pointing to certain obstacles that Iranian women face in their struggle to find their proper place within and in relation to the Islamic state as well as unexpected spaces that have opened up for them to maneuver.

## Women and Revolutionary Stages

Since the outset of the revolution, the state has maintained a Janus-faced relationship with women; on the one hand, seeking to mobilize and keep them, their faces, and bodies (if not their issues) at the center stage of the revolution and, on the other hand, forcefully attempting to be the articulator of what it deems to be the "proper" Muslim woman. The result of this somewhat contradictory approach has been, if I may be permitted to use this rather un-Islamic metaphor, a tango with many

false steps, stumbles, and earnest tries of new steps. In this process, the relationship of women to the Islamic state in Iran has been influenced by the politics of revolution itself, cultural ambiguities about the role of gender in the public domain, exigencies of the developmental state, and women's increasing capacity to utilize the central role given to them by the revolutionary drama in surprisingly effective ways to maintain issues of real concern to them at the center stage of Iranian politics. Of course, any periodization of the nature of state will do injustice to the complexity of issues and dynamics involved. Nonetheless, I think that at least four distinct stages can be identified in the post-revolutionary period, with each having its own particular characteristics. At the same time, it is important to note that the traces of each period have left their marks on Iranian politics and continue to be part of women's daily lives. In other words, although in what follows I will talk about stages and correlate these stages to a certain historical period, my point is that the forces that have powerfully shaped the lives of women in each period all continued to be present to this day, enabling discursive practices that at times work in tandem and other times in opposition to each other. In such a field of conflicting forces, Iranian women have been both cautious and opportunistic, staying aloof whenever necessary and seizing every possible opportunity whenever a space for maneuver is smelled.

## The First Stage: Gender and the Politics of Revolution

This is the immediate post-revolutionary period and the stage in which the central role of women in the unfolding of the revolutionary drama becomes clearly and forcefully inscribed. During this period of power contestation and reproduction, and state building, the representation of the proper Muslim woman assumes much significance as the veiled domesticated woman symbolizes the search for authenticity and cultural revival. Accordingly, women's behavior, appearance, and range of activities comes to be defined and regulated by the political or cultural objectives of various political movements, the state, and leadership. [1] It was in this period that compulsory veiling was legislated, coeducation banned, segregation imposed in many public areas, a general assault on day-care instituted, and female judgeship not recognized. Most significant was the 1979 abrogation of the Family Protection Law (legislated in 1967 and amended in 1974), effectively denying women the right to divorce and re-establishing men's unlimited right of divorce. [2] In addition, women's voices were banned from radio and female singers barred from television. A campaign was waged to tie women to home and family. Women were restricted from certain professions, such as law, and women university students were not allowed into programs such as agricultural engineering and veterinary sciences. The state assumed a pronatalist stance, banning abortion and distribution of contraceptives, extolling the Muslim family, and lowering the age of consent.



Women's responses to new gender codes varied by class and political/ideological orientation, and from enthusiastic support to acquiescence to outright hostility. The common ground upon which almost all women stood, however, was that of a bystander; most if not all of the changes were effectively promulgated irrespective of the multiplicity of the women voices present. Indeed, the model of Islamic womanhood the consolidating state sought to impose on the population was an integral part of the political-cultural project of Islamization as the transformation of Iran was seen as incumbent upon the transformation of women, defined in singular and extremely homogenous terms. As has been repeatedly noted, (re)definitions of gender are frequently central to political and cultural change and the Islamic state in Iran took this task very seriously. [3]

Despite the renunciation of many rights previously held by women, however, it is important to note that the Constitution of the Islamic Republic, ratified during this period of intense political struggles, reaffirmed the basic and fundamental political right of women, 15 years or above, to elect their representatives. According to Article 62 of the Constitution, the deputies of the Majlis as well as the president are elected by the direct vote of the people, so are the representatives of councils of provinces, towns, cities, districts, villages, and productive and industrial units (Article 100). Women have also been vested with the constitutional right to get elected or appointed to the highest political and administrative offices of the land. The only exception to this rule involves the office of presidency which carries an interpretative clause (Article 115 of the Constitution), stipulating that the candidate for the office must be among the "distinguished political and religious personalities" (so far interpreted to be men). [4]

The interpretive or fluid character of the Iranian Constitution is evident in many other areas. For instance, the Constitution provides for "the rights of the people" and guarantees the rights of women, but "in all areas according to Islamic standards." This explicit qualification regarding the laws of Islam clearly locates women's rights along with many other rights in the category of interpretive rather than inalienable, hence

assuring that debates concerning their interpretation will remain part of the struggles and conflicts within the political process. This is especially the case since the general and clear constitutional acknowledgment of equal political rights for women are often in contradiction with the situational civil restrictions and unequal social, economic, and criminal rights (some of which were mentioned above) that have been imposed on women.

### **The Second Stage: One Step Forward or Two Steps Backward?**

As mentioned, the policy choices of the immediate post-revolutionary period, affecting the daily lives of women in fundamental ways, were made in haste and had more to do with the construction of a new national and Islamic identity than the concrete experiences and problems of women. As such, it was only after the new state builders came to experience all the dimensions of their roles as distributors and guarantors of justice that different aspects of their policy choices regarding women began to become slowly manifest (a process that continues to this day). During this stage, which can generally be identified with the eight-year war with Iraq, a variety of women not generally involved in the public domain became mobilized in a whole series of activities. For instance, they staffed the mass laundries and kitchens servicing the war front, served as nurses in the military hospitals, and given more pronounced civilian profile in many government offices.

More importantly, however, many problems particularly regarding the families of those killed in the war came to the fore. This is not to say that these problems did not exist in regards to other families; rather it simply suggests that because of the devastating impact and heavy toll of the war as well as the important social basis the families of those serving in the war constituted for the Islamic state, the new leadership in Iran could not ignore the problems posed. For instance, one of the particularly difficult problems created by the war was the question of mother's guardianship of the children which was taken away in absolute terms by the new laws. [5]

The right to absolute guardianship given to the husband and the paternal family led to many abuses as many young children were, in some cases, forcefully taken away from the wives of those killed in the war as a way to collect the funds given to these children by the Foundation for the Martyred or other governmental agencies. After much complaints by the martyrs' wives, and quite a bit of discussion and debate in the parliament, a new law was passed in 1985 giving the right of fostership of a minor to the mother unless the courts reject her competence. This allowed her to collect governmental funds for their children even after she wedded another man. Although this practical legislative maneuver did not bring into question the legal and religious foundations of absolute paternal guardianship (since it only pertained to funds distributed by the government and not inherited property), nevertheless it can be seen as progressive attempt to deal with a concrete problem articulated by women themselves.

Although no clearly articulated solution to the problem has yet to be found, the state and the judicial system went

through a similar process as many problems became manifest in regards to women's inability to divorce and men's right to enter into several temporary and permanent marriages. Increasingly the courts have begun to show flexibility in regards to the women's right to divorce and to certain amount of marital wealth after a man-initiated divorce, even if the question of women's economic well-being after a woman-initiated divorce has yet to be addressed in a satisfactory way.

Measures such as paying women for services rendered in the house in case of divorce or adjusting women's *mehr* to inflation again in case of a man-initiated divorce, although passed by the parliament in the years after the war, can also be put into the category of pragmatic steps dealing with women's immediate grievances. The common point for all these steps has been the reaction registered to the grievances of a particular base of support through attempts to reform the existing laws. Hence, it is clear that the legal arena has been identified as the main terrain of struggle. But these steps also reflect an unwillingness or at least hesitance to deal with the deeper and more fundamental inequalities that exist within the family arena regarding divorce and marital rights (e.g., Article 1133 of the Civil Code stating that a man can divorce his wife whenever he wants) as well as in other spheres of law (e.g., inheritance laws and laws regarding blood money). As such, those engaged in the reinterpretation of Islamic jurisprudence have been willing to maneuver within the existing categories but have so far not been able to question the categories themselves. [6]

#### Endnotes

1. For an analysis of gender and post-revolutionary state-making see Farideh Farhi, "Sexuality and the Politics of Revolution in Iran," in *Women and Revolution in Africa, Asia, and the New World* edited by Mary Ann Tetreault. Columbia, South Carolina: University of South Carolina Press, 1994.

2. The Family Protection Law was intended to reverse some of the unlimited rights given to husbands in relation to divorce. Accordingly,

- a) it gave men and women, under specific circumstances, the right to divorce;
- b) it obligated both men and women to offer their supporting evidence for divorce to the Family Protection Court;
- c) it specified circumstances which allowed the husband to seek divorce, hence limiting his unlimited right of divorce.

3. For the best collection of how these redefinitions have worked themselves out in the Islamic world see Deniz Kandiyoti, ed. *Women, Islam and the State*. Philadelphia: Temple University Press, 1991.

4. For a succinct delineation of women's political rights after the revolution see Mehranguiz Kar "Women's Political Rights in Iran after the Revolution." *The Iranian Journal of International Affairs* 8, 3 (Fall 1995), 659-675. I will deal with the question of whether women can be president in the Islamic Republic of Iran and the debates generated around this question later in this paper.

5. Mehranguiz Kar, "Madaran che mikahand?" (What Do Mothers Want?). *Zanan* 4, 26 (Mehr/Aban 1374/1995), 38-44.

6. A recent example of the swift reaction on the part of Islamic juridical tradition to the questioning of juridical categories came in the words of Grand Ayatollah Fazel Lankarani who responded with vehemence to an apparent attempt by the women in the Parliament to initiate a debate on blood money, which for a killed woman is half of the amount given for a killed man. As has been usually the case, those attempting for reform were reacting to a particular case which had received much publicity in the press. Lankarani's riposte was merciless: "Who are you and I to meddle in Islamic jurisprudence?" He then went on to blast those who without any knowledge are attempting to understand matters "those of us who have spend years studying do not understand."

### Regional Protection of Human Rights in Asia (continued from page 6)

The strengths and weaknesses of a national institution thus depend not only upon its founding instrument (Is it a statutory or constitutional body? Does it have its own resources? It is able to act independently or is it under the scrutiny of another government ministry or machinery?) but also upon the proactive and courageous nature of its members and the willingness to interpret its mandate responsibly and responsively to those affected by human rights violations.

#### Conclusion

In conclusion, one can note that while there is at present no inter-governmental system or machinery specifically for the promotion of human rights in Asia at the regional or sub-regional level, the seeds for such a system are being sown by a variety of activities at the regional, sub-regional and national levels. These range from dialogue forums to channels for capacity-building, education and training, information sharing and "confidence-building" at all three levels. Perhaps the most concrete

development in recent years has been the growth of National Human Rights Commissions, three of which are fully operational and several more are in the offing. These should be maximized and expanded to as many countries as possible, as they may lead to greater networking and act as a basis of convergence for the kind of inter-governmental system appropriate for Asia. However, it is the quality which counts, and that quality will depend on the independence and integrity of these institutions.

A final caveat is that whatever system is evolved by governments, there should always be room for check-and-balances between governmental authorities on the one hand, and between governmental authorities and the non-governmental sector on the other hand. This need for check-and-balances thus calls for a variety of "actors" to promote and protect human rights, with a clear message that the preferred mechanisms or machineries for human rights protection are those which are not only independent but also pluralistic and participatory.

# Cultural Values and Human Rights : the Korean Perspective

Byung-Sun Oh  
Sogang University, Seoul

*(This article is a short version of the research paper from South Korea included in the book "Human Rights in Asian Cultures - Continuity and Change", 1997 published by HURIGHTS OSAKA. - Editor's note.)*

## Confucian Tradition and Familism-directed Culture

Korean culture in general may be described as a part of East Asian culture, centered on Chinese Confucian tradition and characterized by extraordinary homogeneity. All Koreans speak one language, use a unique and indigenously developed alphabet 'hangul', and belong to the same racial stock - part of the Altaic family of races. Most young Koreans receive a virtually identical education from primary school to high school using similar textbooks and pedagogy.

Moreover, the relatively small size of Korean territory means that the population is subject to nearly the same climate and natural environment. Nearly all parts of the country lie within the distance of a half-day or at most one-day round trip. Thus Korean people can easily maintain close relationships with their relatives and friends. These factors all help to integrate the Korean people into a tight and homogeneous cultural and social system.

Due to the family-centered Confucian social ethics but also other traditional cultural legacy such as folkloristic Shamanism which stresses emotion and affections in interpersonal relations, Koreans usually place much value on family and family-related matters in their lives. This kind of attitude and social behavior may be called 'familism'-directed culture.

## Introduction of Christianity and Western Value System

Another important aspect of Korean culture can be understood through the religion of Korean people. The majority of Koreans regard themselves as believers in one or more religion, belonging to some kind of major religious bodies in the world. Though Korean culture was greatly influenced over two thousand years by Buddhism, Taoism, Confucianism, and folkloristic Shamanism, Christianity has played an extraordinary role in Korea's modernization. Korea now has by far the highest proportion of Christians - nearly half of all professed religious believers - among the traditionally Confucian and Buddhist cultures of East Asia. According to the recent population and housing census, the proportion of Christians in the total population of Korea was 24.3 per cent (including 4.8 per cent Catholics) in 1991. Since the first resident Christian missionary, the American medical doctor Horace N. Allen entered Korea in 1884, it was considered true that Christianity was a particularly important benefactor to Korea in that it presented Koreans with a new, that is Western, civilization. The contribution of Christianity to Korea may be summarized into the following several points: introduction of Western

civilization, rearmament of a decaying morality, promotion and popularization of education, enhancement of the social status of women, rectification of the early marriage system, popularization of the Korean alphabet and vernacular literature, modernization of traditional values and philosophy, and stimulation of individualism.

## Syncretic New Confucian Ethics as a Contemporary Social Morality

Many Koreans have become concerned that acceptance of Christianity and Western way of thinking and living may lead to a loss of national identity unless combined with traditional ethical and cultural values. Many Koreans are worried that the values, morality, and ethics of modern-day Korea lag far behind the level of material progress.

The new Confucian ethics places great emphasis on education and personal and familial relations. It also stresses personal cultivation, self-improvement, and spiritual and psychological discipline of the self. This is why education has become one of the most important socioeconomic issues in Korea.

The new Confucian ethics also stresses a harmonious personal relationship among individuals and puts great importance on harmony, cooperation, consensus, and social solidarity among members of an organization. This contrasts with the Western emphasis on competition among the members of an organization and maybe the chief factor determining the distinctive characteristics of organizational dynamics in Korea and other East Asian countries.

## Cultural Values and Human Rights

### a. Familism-entailed Preference for Sons

Traditionally the principles of Confucian ideology served as the primary influence on the behavior and customs of the Korean family. The male-oriented teachings of Confucianism stress the patriarchal role of men, the importance of family lineage, and the significance of paying homage to ancestors. As such, men predominate over women and sons are preferred over daughters.

Today the importance of sons has diminished, largely due to increasing numbers of people who are educated, experienced in cultural exchanges, and aware of different values. However, Koreans still generally prefer sons over daughters. When a mother gives birth to a son, she feels relief, pride, and joy because she believes that she has fulfilled one of her fundamental duties to her parents-in-law. When a daughter is born, the mother usually feels disappointed and consoles herself with the thought that her daughter can be helpful to her. Nevertheless, many mothers hope for sons the next time, or continue to give birth until they bear sons.

### b. Sex Discrimination in the Labor Market

During the three decades of a rapid economic growth coupled with industrialization since 1960s, the transition from an agrarian society to an industrialized one cannot but rely on the cheap wages and the high productivity of laborers. In the process of industrialization, the masses of people who migrated out of rural areas became the urban poor, forming a large industrial reserve force. These people have been compelled to sacrifice themselves for the sake of national economic development. The trade union rights and the right to strike have been held in check by harsh labor laws and other laws. At times, labor movements have been denounced by the government as pro-communist activities or as acts sympathetic to North Korea. The government's dependence on police power in suppressing the exercise of rights by laborers and low income urban people is one of the important causes of human rights infringements in South Korea.

### c. The Rule of Politics Over the Rule of Law

Another impeding factor or difficulty in implementing the international covenants on human rights and protecting human rights is the weakness of the normative power of the Constitution. In theory, the Constitution is the supreme law of the state and sets the highest standard for the merit and validity of government measures and laws. However, since its first proclamation in 1948, the Constitution has been unable to preserve its dignity as the supreme law. As has been amended nine times so far, all of these amendments were centered on the questions of the method of electing the President, the lengths of the terms, and the structure of the state power. All the constitutional amendments, except for those of 1960 and the present Constitution in 1987, were aimed at extending the term of office of the incumbent president or at providing ex post facto justifications of the military coup d'etat (1961 and 1980). Because of this history, the Constitution has come to be regarded as something that can be changed for the maintenance of power of the president or ruling party.

### Human Rights and Human Dignity

The idea of human rights inhering in each person as a human being was not part of pre-modern Korean legal culture; but one had duties according to one's place in the sociopolitical hierarchy, and within that context one's sense of duty might well carry with it, even in relations with superiors, a modest expectation that the other recognized a duty to reciprocate, if not in equal kind, at least with humane condescension. Thus within the Confucian hierarchy of carefully differentiated stations in society, there existed to some degree a 'reciprocal-duty consciousness' which in effect, and in perspective, functioned as a type of qualified individual-rights consciousness. Irresponsibility was not an accepted principle of government or social rule, however often manifested by some elites. However, the notion of human rights established under government policy and formal law, with protective institutions, as developed in parts of the West, was new and alien when Korea was forced to open its ports for intercourse with Japan and the West.

It may be conducive to describe some ideas on human rights proclaimed on such events as Tonghak (Eastern Learning) Movement of the 1890s and Equalization Movement of the 1920s to understand the Koreans' early efforts in realizing equality of people and human dignity.



*Tonghak* developed an institutional hierarchy throughout the south, spread rapidly among the rural poor, and by 1894, when it launched a full-scale rebellion, the followers numbered around 400,000. Though its doctrines contained a new belief in social equality and had some Christian elements, it was not opposed to Confucianism but rather sought to revitalize the five relationships in Confucian ethics and loyalty to the monarch. It was from the beginning opposed to foreign influence.

Later in the 1920s, the Statement of Purposes of the Equalization Movement (*Hyongpyong*) launched by the butcher (*paekchong*) group establishing a society to improve the social position of the *paekchong*, declared among many things the following points: 1) Equality and fairness are [should be] the basis of society; kindness is [should be] a basic attribute of human nature. 2) The basic purpose of our society is to smash down social ranks, do away with contemptuous labels, and encourage education so that we too may truly have standing as persons.

Based upon past diverse experiences, such as Tonghak Movement, Equalization Movement, Independence Movement and so on, though they have been suppressed by foreign and domestic political powers even after liberation from Japanese rule, the Koreans have developed a strong desire to protect human rights. This has been expressed by such political upheavals as the student revolution of 1960 and the democratization movement of 1989.

Nowadays, the harmonious integration of the values stressing cooperation and competition among members of an organization appears increasingly to be crucial for Korean society's continuous development. The communal spirit-oriented new Confucian ethics, which stresses duty-consciousness, contrasts with the individual-oriented Protestant ethics, which emphasizes right-consciousness. For many Confucian-value-oriented Koreans, the development of the concept of basic human rights,

especially in connection with private property, private interest, and privacy of an individual, presents a challenge. This is in part because the new Confucian ethics stresses one's duty to a larger entity over individualism.

### **Current Efforts to Enhance the Protection of Human Rights**

The most important impeding factor and difficulty in the implementation of the international human rights covenants in South Korea is the division of the country. In the case of South Korea, the bitter experience of the Korean War (1950-1953) has left a legacy of fear, distrust and hostility in the minds of the people against communism and the North. Anti-communist and anti-North Korea ideology has been used to justify a series of military coup d'etat and authoritarian regimes. In the name of 'national security', oppressive laws which curtail or violate human rights have been enacted and any speech or activity critical of the government has been punished as a criminal act due to its beneficial effect on North Korea.

#### **a. Improving the Status and Legal Rights of Women**

Legal status reflects political, economic, and social status. Since the 1970s and 1980s, Korean women have come to develop an increased understanding of women's legal rights. As a result, the revised Family Law was passed in 1989 and was hailed as the most outstanding victory of women's political groups. Women also participated actively in the enactment of the Equal Employment Law, and drafted the Mother-Child Care Law and the Prevention of Prostitution Act.

The Family Law reflects tradition and custom as it deals with marriage and family life. First, the revised law amended the head of the family inheritance and the succession system, thus weakening the patriarchal system to some extent. But the system of the head of the family still remains. Second, it has broadened the scope of relatives, including the mother's and wife's relatives along with those of the father and husband. Third, the earlier provision permitting a husband to register a child born out of wedlock without the consent of his wife was abolished. Fourth, a new provision was included permitting equal parental authority over the children: the old law recognized the father's authority only. Fifth, the law concerning marital age has been strengthened in favor of the wife. Sixth, in the case of divorce, the couple must discuss who has the responsibility of rearing the children. Besides, a property division claim has been inaugurated in case of divorce and if a couple does not reach an agreement, the case is brought to the Family Court. Sixth, men and women have been given equal rights to inheritance. Thus it can be said that the present Family Law enhanced women's rights.

#### **b. Restoring Just Constitutional Order by Trying State Criminals**

Perhaps the most crucial and thorny agenda in the reform policy under the present government has been the issue of trying state criminals and restoring just constitutional order. Like a number of other governments,

the current civilian government, launched in 1993, confronted the issue of bringing military violators of the Constitution and human rights to trial. Human rights organizations and progressive political sectors urged the incumbent government to set up trials for ex-presidents and generals and their one-time crony national assembly members. The subsequent prosecution of former Presidents Chun Doo Hwan and Roh Tae Woo however was criticized on one ground. While the order of the President for the Kwangju probe is proper it should be carried out by independent special prosecutors not one whose job depends on the President. Nonetheless indictment proceeded without much resistance and two ex-presidents, Chun and Roh, later faced court proceedings and ultimately convicted.

### **Strengthening Human Rights Policy and Educational Effort**

From 1996, the new movement for improving the quality of life and human rights took varied forms. Besides trying state criminals and reestablishing constitutional order a right several are notable.

First, a new movement for empowering women was launched. Amidst the environment of reconstruction, so far the issue of gender roles in the context of social equality has remained safely shielded behind economic or political debates. Clearly, people in contemporary Korea are experiencing changes in attitude and perceptions of gender roles. Quite recently the government established a new personnel recruitment policy by introducing a quota system for women who apply for government posts.

Secondly, in 1995 there appeared a second national association of trade unions which is prohibited from the government's viewpoint. However, the establishment of this de facto rival national association of trade unions seems to open a new era of allowing multiple trade unions.

Thirdly, a new ruling on the National Security Law was rendered recently in a district court which interpreted the scope of the law in a narrow and negative way. The accused was indicted on a charge of benefiting and advocating for North Korea by communicating with North Korean people and publishing a material on socialist system. The court rejected the charge on the ground that it could not find any criminal intent on the accused in his simple activity of communicating with North Koreans and publishing a pro-North Korea book.

Though there are plenty of norms and principles on human rights and democracy and hopeful signs of development, still lacking is their effective implementation through the establishment of appropriate mechanisms for the protection of human rights. Greater efforts will be needed in monitoring and correcting human rights infringements on the part of human rights advocates and private civil rights organizations.

(References omitted due to space limitation)



## The Rights Way to Development

In its 1994 report, *The Rights Way to Development*, the Human Rights Council of Australia (HRCA) made the case for placing development assistance policies within the internationally agreed human rights framework. The report generated considerable interest internationally and has since been widely cited.

The report recommends the following major changes for donors:

- a. an explicit commitment, at the highest level, to the realization of human rights through international cooperation as the overall mission of the development assistance program;
- b. a commitment to express development objectives in terms of human rights;
- c. an explicit priority focus on the disadvantaged and marginalized;
- d. coordination with the reporting bodies of the UN Human Rights Covenants including the Committee on Economic, Social and Cultural Rights, Human Rights Committee, and Committee on the Rights of the Child;
- e. the use and promotion in donor country programs of National Action Plans on human rights (as agreed at major UN conferences - Vienna, Copenhagen, Beijing) and the recommendation of the UN Treaty monitoring bodies;
- f. a commitment to focus both policy dialogue and technical cooperation on issues of budgetary priority, legislative and administrative change as part of an integrated development assistance strategy;
- g. a commitment to the participation of stakeholders as a recognized human right;
- h. the adoption of explicit policy principles for determining the extent of participation of different stakeholders and for resolving and arbitrating differences between them;
- i. the establishment of in-country teams of stakeholders to oversee country research and analysis, formulation of development objectives and strategy, and implementation, monitoring and evaluation of program;
- j. the agreement at a government-to-government level of a binding grievance procedure for governments and other stakeholders;
- k. the establishment of an independent inspection and monitoring panel open to stakeholders to ensure program consistency with human rights

outcomes; and

- l. a policy to ensure that independent project contractors and consultants are both familiar with the program and project human rights objectives and are made contractually responsible for their realization.

HRCA has drafted a "manual for implementation" which shows how the adoption of the rights approach will affect all aspects of the development process and the relationship between stakeholders - from institutional change in the donor agency through the formulation of country strategies to the implementation and evaluation of projects.

The manual covers the establishment of broad policy objectives for the donor program, the nature of the policy dialogue between donor and recipient governments and other stakeholders, the meaningful participation of stakeholders, the research and analysis of the human rights situation in countries to establish baselines against which progress can be measured, the nature of support that will lead to the setting of priorities to achieve the human rights objectives, and monitoring and grievance procedures.

The manual intends to assist donor governments to implement existing policy commitments to the realization of human rights. In doing so, it suggests a means to achieve greater harmony in government policy between the traditional diplomatic pursuit of human rights (often primarily understood as civil and political rights) through foreign ministries and the traditional economic or basic needs approach of official donor agencies.

For recipient governments, implementation of the rights approach means specific mechanisms for holding donor governments accountable to their obligations to cooperate, through the provision of development assistance, in the realization of rights.

For further information, contact: Human Rights Council of Australia (Inc.) P.O. Box 841 Marrickville, Sydney, NSW 2204 Australia; ph/fax (612) 559-2269; e-mail: agf@peg.apc.org

## Events

1. HURIGHTS OSAKA will be holding its first subregional workshop on human rights education in schools. This will cover the Southeast Asia subregion. The workshop will be held in Surabaya, Indonesia in May. To be invited are teachers, education officials and NGO workers who are involved in human rights education in schools. This workshop will review the current experiences in Southeast Asia and explore the possibility of having common guides in developing human rights education in schools program.

2. FORUM ASIA will be holding a workshop on developing a training manual on economic and social rights. This will be held in June. A regional forum on Asian values will be held in July. Both activities will be held in Bangkok. For more information contact: FORUM ASIA 109 Suthisarnwinichai Road, Samsennok, Huaykwang, Bangkok 10320 Thailand; tel (662) 276-6946 to 47; fax (662) 276-2183; e-mail: chalida@mozart.inet.co.th

## Recently-Held Events

1. An international symposium on the Peaceful Settlement for East Timor (PEACE-SET) was held on March 2-3, 1998 in YMCA, Bangkok. The two-day symposium discussed the role of ASEAN in the promotion of East Timor peace process; self-determination and development for the East Timorese; and obstacles to East Timor conflict resolution. Two workshops were also held - one on principles, practicalities and approaches to peace process; and another on conflict resolution and political negotiation. For further information, contact: PEACE-SET c/o ACFOD, P.O. Box 26, Bungthonglang Post Office, Bangkok 10242, Thailand, tel (66 2) 370 2701; fax (66 2) 374 0464; e-mail: acfod@ksc15.th.com

2. The Canadian Human Rights Foundation (in cooperation with the Commission on Human Rights in the Philippines) held its pilot training session for officials of national human rights institutions and related government offices in Asia on February 8-13, 1998 in Tagaytay city, Philippines. Participants from Indonesia, Thailand, the Philippines, Cambodia, India, Malaysia and South Africa attended the training. The participants are a mix of representatives of national human rights institutions and non-governmental organizations. For more information contact: Canadian Human Rights Foundation, 1425, boul. Rene-Levesque Ouest, b. 307, Montreal (Quebec) Canada H3G 1T7; tel (514) 954-0382; fax (514) 954-0659; e-mail: ianh@chrf.ca



## HURIGHTS OSAKA Activities

HURIGHTS OSAKA is publishing several English materials on human rights during the first quarter of 1998. The first two issues of its occasional paper series are featuring research papers on the social development and human rights research project. Research papers on Indonesia and the Philippines are being published.

Another publication focusing this time on human rights education in schools is also coming out. This publication is a collection of papers on some experiences in Asia on teaching human rights in schools.



May be opened for inspection by the postal service.

**AIR MAIL**

**PRINTED MATTER**

HURIGHTS OSAKA, inspired by the Charter of the United Nations and the Universal Declaration of Human Rights, formally opened in December 1994. It has the following goals: 1) to promote human rights in the Asia-Pacific region; 2) to convey Asia-Pacific perspectives on human rights to the international community; 3) to ensure inclusion of human rights principles in Japanese international cooperative activities; and 4) to raise human rights awareness among the people in Japan to meet its growing internationalization. In order to achieve these goals, HURIGHTS OSAKA has activities such as Information Handling, Research and Study, Education and Training, Publications, and Consultancy Services.



**HURIGHTS OSAKA**

**HURIGHTS OSAKA**

**(Asia-Pacific Human Rights Information Center)**

2-1-1500, Benten 1-chome, Minato-ku, Osaka 552 Japan

Phone: (816) 577-35-78

Fax: (816) 577-35-83