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ASIA'S ACTIVISTS AND THE FUTURE OF HUMAN RIGHTS

*Dinah PoKempner**

THE future of human rights in Asia is both reflected and embodied by its activists, the individuals and non-governmental organizations ("NGOs") that face their governments daily to assert violations of universal freedoms. The growth of the human rights movement there has been recent but explosive; its power can be gauged by the reaction of Asian governments in asserting a putative Asian concept of human rights that subordinates political and civil freedoms to economic growth and stability, and individual liberties to the welfare of communities. This construct is taken most seriously not by Asian activists but by non-Asians who are fearful of committing cultural insensitivities. It does, however, point to salient differences between the Asian human rights community and its counterparts in Europe and the United States, particularly the emphasis on economic, social, and cultural rights as indivisible from political and civil rights.

This paper discusses the evolution of the human rights movement in Asia and its likely course of growth, with attention to developments in those countries that at present do not allow independent activist groups. Asia is unlikely to see the development of regional or sub-regional inter-governmental human rights institutions in the near future, so these groups will bear much of the burden of responding to transnational abuses that are the trend of the future.

I. HUMAN RIGHTS FROM THE ASIAN PERSPECTIVE

The Declaration of Human Rights applies without qualification to the entire world, but one must note that each country has its particularities, its tradition, its laws. The particularities and traditions of the Orient are different than those of the Occident. One cannot apply to another that which only concerns oneself. No one but ourselves can apply our own traditions.

—Do Muoi, Secretary General of the Vietnam Communist Party, addressing high-level cadres in March 1994.¹

In the matter of human rights, there is no such thing as regional particularity. Man enjoys liberty, and no one has the right to take it

* Deputy General Counsel, Human Rights Watch. The author would like to thank Jeannine Guthrie, NGO liaison for Human Rights Watch/Asia, for her comments on this paper. The views expressed are the author's own, and do not necessarily reflect the views of Human Rights Watch.

1. Dinah PoKempner, *Human Rights and U.S. Foreign Policy in Asia: Debates and Strategies*, in *The U.S. Role in the Asian Century: A Panel of Experts Looks at National Interest in the New Environment* 533, 534-35 (Sol Sanders ed., 1997).

away, on the pretense that "each country has its particularities, its traditions and its laws."

—Father Chan Tin, responding to Do Muoi's address.²

Few governments in Asia directly challenge the notion that, at some level, human rights are universal. Indeed, it would be difficult to do so credibly given the widespread acceptance of the Universal Declaration of Human Rights³ and the significant number of Asian states that are parties to the two treaties that are commonly described as the "International Bill of Rights"⁴—the International Covenant on Civil and Political Rights⁵ and the International Covenant on Economic, Social and Cultural Rights.⁶ Yet in the run-up to the 1993 Vienna World Conference on Human Rights, governments and elites sought to defend themselves against human rights criticism by characterizing these standards as foreign and unreflective of Asian cultural values.

The so-called Asian concept of human rights, first propounded by Singaporean leaders,⁷ has found a chorus from other official quarters in southeast and east Asia, notably China, Vietnam, Malaysia, and Indonesia.⁸ The strands of this argument include the following assertions: political and social stability is necessary for economic development, which, in turn, is a precondition for human dignity and other civil and political rights; economic rights, particularly the economic development of the state, should take primacy over civil and

2. *Id.* at 535.

3. G.A. Res. 217A(III), U.N. GAOR, 3d Sess., Supp. No. 1, at 71, U.N. Doc. A/810 (1948). However, on the occasion of the July 1997 Association of Southeast Asian Nations ("ASEAN") ministerial conference, President Mahathir Mohamad of Malaysia expressed an interest in revising the Declaration. Keith B. Richburg, *Asians, West Clash Over Human Rights*, Wash. Post, July 30, 1997, at A1.

4. See Louis Henkin, *Preface to the International Bill of Rights*, The International Bill of Rights ix (Louis Henkin ed., 1981). Parties to the International Bill of Rights include Japan, Vietnam, North Korea, South Korea, the Philippines, Cambodia, India, Nepal, and Sri Lanka. United Nations, *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 1996*, at 110-11 & 120-21 (1997). The United States, in contrast, became a party to the International Covenant on Civil and Political Rights only in 1992. *Id.* at 121. The United States signed the International Covenant on Economic, Social, and Cultural Rights in 1977, but it has not yet been ratified. *Id.* at 111.

5. 999 U.N.T.S. 171 (1976).

6. 993 U.N.T.S. 3 (1976).

7. President Lee Kuan Yew, Ambassador Bilahari Kausikan, and Foreign Affairs Secretary Kishore Mahbubani have been the most prolific proponents. See Bilahari Kausikan, *Asia's Different Standard*, *Foreign Pol'y*, Fall 1993, at 24; Kishore Mahbubani, *An Asia-Pacific Consensus*, *Foreign Aff.*, Sept.-Oct. 1997, at 149; see also Walden Bello, *Democracy versus Authoritarianism in East Asia*, *The Nation* (Bangkok), May 26, 1995; Eric Jones, *Asia's Fate: A Response to the Singapore School*, *Nat'l Interest*, Spring 1994, at 18.

8. See Liu Paopu & Xiao Qiang, *A Report on the World Conference on Human Rights in Vienna*, in *Chinese Community Forum* (Dec. 21, 1993) <<http://www.china-net.org/CCF93/ccf9329-1.html>>; Tran Quang Co, *Rights and Values*, *Far E. Econ. Rev.*, Aug. 4, 1994, at 17; *Burma Urges Non-interference*, *The Nation* (Bangkok), Apr. 1, 1993.

political rights; the West's undue emphasis on individual rights is socially destructive; and an emphasis on individual duties and the rights of collectivities is more in tune with Asian cultural traditions. While there is lip service that a core of universal rights exist—no government is eager to claim torture, murder, rape, or genocide as authentic to its culture—the argument is that each country should be entitled to interpret international norms in light of its particular culture, history, political system, and level of economic development.

This argument, which seems to have made its greatest impression in the West, is fraught with internal contradictions. One is the degree to which it is possible to refer to an Asian view at all, given the political, cultural, and religious diversity of the region. It would be difficult to construct an Asian consensus on the proper relation of religion and the state, for example, based on the divergent positions of Pakistan, which elevates Islamic law to federal status, and Vietnam, which exercises tight state control over religion in the name of a borrowed Western ideology, Marxism. Another is the internal inconsistency of maintaining, on the one hand, that civil and political rights must wait on economic development, and holding on the other that individual rights must continue to be subordinated to the interests of the community even in economically advanced societies such as Singapore. Yet another contradiction is the problem of identifying, in the context of a multiethnic region rife with communal tensions, what is actually meant by the community to which individual rights must bow.⁹

The most powerful rebuttal, however, comes from thousands of Asians themselves, who reject the idea that their culture requires a diminished set of individual freedoms. Father Chan Tin, a Vietnamese Catholic intellectual who was imprisoned by both the Thieu and communist governments,¹⁰ is by no means alone in his views, quoted above.¹¹ Both the Vietnamese and Chinese governments have felt compelled to issue policy papers on human rights, not only because of Western pressure but because of burgeoning interest on the part of their intellectual and governing elites. Indeed, the Chinese government, which does not allow independent human rights groups, felt compelled to create the non-governmental China Society for Human Rights Studies—chaired by a high-level secretary in the Chinese Communist Youth League—to ensure its access to the debates in the NGO meetings that accompanied the regional preparatory conference to the Vienna World Conference on Human Rights.

9. Yash Ghai of the University of Hong Kong has noted that this claim to an Asian concept of human rights is made not on behalf of traditional communities, which generally are founded on reciprocal obligations to the individual, but on behalf of authoritarian states. Yash Ghai, *Human Rights and Governance: The Asia Debate*, 15 Austral. Y.B. Int'l L. 1, 5-6 (1994).

10. See Shiela Tefft, *Vietnam Sends Mixed Signals on Human Rights Record*, Christian Sci. Monitor, June 16, 1992, at 5.

11. See text accompanying *supra* note 2.

In that March 1993 conference, China, Singapore, Malaysia, Indonesia, and Iran lobbied heavily to assert that concerns such as state sovereignty, political stability, and development should outweigh the West's emphasis on civil and political rights in their region, and opposed human rights conditionality to economic aid. Over one hundred Asian non-governmental organizations convening at the same time issued a comprehensive rebuttal of these positions.¹² They emphasized that human rights are universal and their defense "cannot be considered to be an encroachment upon national sovereignty."¹³ While noting the importance of respect for cultural pluralism, the NGOs declared that "those cultural practices which derogate from universally accepted human rights, including women's rights, must not be tolerated."¹⁴ Nor did the NGOs accept the hierarchy of economic, social, and cultural rights as taking precedence over civil and political rights. Noting that "[v]iolations of civil, political and economic rights frequently result from the emphasis on economic development at the expense of human rights,"¹⁵ the NGOs flatly stated: "*One set of rights cannot be used to bargain for another.*"¹⁶

II. LOCAL ACTIVISM

It is no accident that the governments that most vigorously proound the Asian concept of human rights happen to be intolerant of internal as well as foreign critics. Singapore has refined the legal tactics for silencing critics into an art form;¹⁷ China still imprisons its perennial pro-democracy activists; Vietnam assiduously incarcerates advocates of human rights and limited government from both the left and right ends of the political spectrum.¹⁸ In these states, as well as others such as North Korea, Brunei, Bhutan, and Burma, there are virtually no independent human rights groups.

Indonesia, another strong proponent of the Asian concept, presents a mixed picture, with the government in recent years tightening restrictions on free expression,¹⁹ yet facing a well-established and very activist human rights community as well as a national human rights commission that increasingly is becoming a forum for complaints of

12. Bangkok NGO Declaration on Human Rights, March 27, 1993 (on file with the author).

13. *Id.*, para. 1, at 5.

14. *Id.*

15. *Id.*, para. 2, at 5.

16. *Id.*, para. 2, at 6.

17. See Asia Watch, *Silencing All Critics: Human Rights Violations in Singapore* (1989); Melanie Chew, *Human Rights in Singapore: Perceptions and Problems*, 34 *Asian Survey* 933, 933-48 (1994).

18. See Human Rights Watch/Asia, *Vietnam: Human Rights in a Season of Transition: Law and Dissent in the Socialist Republic of Vietnam* 8-13 (Aug. 1995).

19. See Human Rights Watch/Asia, *Human Rights in the APEC Region: 1995*, at 26 (Nov. 1995).

abuse.²⁰ In 1995, one of the strongest regional human rights organizations, Forum-Asia, produced a comprehensive report on human rights in Indonesia, the first such country report to be produced by an Asian regional group.²¹ In keeping with concerns shared by both Asian groups and Asian governments, the report placed military abuses and restrictions on civil and political rights into the context of the history and development of Indonesia, and examined human rights abuses in the context of development issues such as land policies and environmental practices. The Indonesian government was less than gracious in its reception of the hard-hitting report, issuing a press release which complained:

We had indeed expected that the Forum Asia, whose board members are respected and learned personalities of some Asian countries would gauge and view problems of sister Asian countries through Asian eyes. But, how disappointing have these expectations turned out to be. Forum Asia plainly reveals to assess problems of an Asian country through non-Asian eyes, it prefers to toe the line of certain non-Asian/NGO's which delight in looking at Indonesia through dark tainted [sic] glasses.²²

In countries that are making a transition to more democratic politics and more independent legal systems, human rights groups have proliferated in spite of state antipathy or suspicion. Among such countries are Sri Lanka, India, Thailand, Hong Kong, and above all, the Philippines. The first generation of human rights organizations in the region emerged from political crackdowns of the 1970s, and were focused on civil and political rights—particularly the need to respond to arrests and detentions.²³ Organizations such as the Legal Aid Institute in Indonesia and the People's Union for Civil Liberties in India directly engaged the legal systems in these countries on behalf of political detainees. Funding from Western donors helped fuel the proliferation of NGOs in the 1980s and 1990s, and political and economic developments broadened the concerns of the new human rights groups.²⁴ The newest generation of NGOs tends towards smaller groups that are more focused on specific issues, such as child labor, migrant rights, minority rights, or land issues.

In addition, regional and international political events provided a catalyst for networking and the formation of regional coalitions. For example, the Asia Pacific Forum on Women, Law and Development

20. See Sidney Jones, *Regional Institutions for Protecting Human Rights in Asia*, 50 *Australian J. Int'l Aff.* 269, 273 (1996).

21. Asian Forum for Human Rights and Development (FORUM-ASIA), *Stability & Unity on a Culture of Fear: Indonesia 50 Years After Independence* (1995).

22. Embassy of the Republic of Indonesia, Bangkok, Press Release No. 18/VIII/95/PEN, Aug. 28, 1995 (on file with the author).

23. See Sidney Jones, *The Organic Growth: Asian NGOs Have Come into Their Own*, *Far E. Econ. Rev.*, June 17, 1993, at 23.

24. *Id.*

grew out of the 1985 Nairobi conference on women's rights.²⁵ The organization unites some of the region's foremost women's activists in a regional forum for the promotion of model legislation, policies, and grass-roots economic and advocacy strategies, to protect women's rights in situations ranging from domestic violence, prostitution, and religion-based discrimination to labor exploitation, land ownership, and control of reproduction.²⁶ The annual Asia-Pacific Economic Cooperation ("APEC") conference regularly generates one or more parallel NGO conferences, and causes NGO groups to press human rights concerns to APEC members. The People's Plan for the 21st Century, a forum launched in 1989, has used opportunities such as the 1991 annual meeting of the World Bank and the International Monetary Fund, the 1992 United Nations Conference on Environment and Development, and meetings of the Non-Aligned Movement, ASEAN, and other subregional groups to set out their positions on both civil rights and development issues and to forge links with NGOs in Europe and South America.²⁷

The proliferation of NGOs and the development of regional links means that there is a great deal of knowledge and experience available for start-ups, shortening the gestational time for human rights groups in countries that are making rapid transitions from closed to more open societies. In Cambodia, for example, one of the first human rights organizations since the Khmer Rouge era, *L'Association des droits de l'homme au Cambodge* ("ADHOC"), was formed at the time of the Paris peace accords of 1991. When the U.N. peacekeeping mission arrived, ADHOC's members, all former political prisoners, were hesitant even to meet publicly with the chief of the U.N. mission's Human Rights Component. Yet within the next year, more than a dozen groups emerged, and ADHOC and another human rights group were well on their way to establishing branch offices in every province of the country. The hothouse conditions encountered in Cambodia arose from the momentous, if fleeting, sense of change that the U.N. occupation brought, and international funding for human rights groups solicited and distributed by the Human Rights Component itself. Domestic NGOs in Cambodia now number over one hundred, some focusing on more classic human rights activities such as prison monitoring, human rights training, and legal defense, and others combining human rights activism with health, welfare, and development work. Hong Kong has also experienced a sudden flowering of human rights groups in the dusk of British colonial rule, even while these groups are fully aware they may have to disband or

25. See generally Margaret Schuler, *The Asia Pacific Forum on Women, Law and Development: Its Origins, Issues and Vision* (1990).

26. *Id.*

27. See People's Plan for the 21st Century, *From Hope to Action: The Alliance of People* (1992) (on file with the author).

go underground if China, after June 30, 1997, applies to them policies similar to those it enforces in the mainland.²⁸ In both cases, activists from countries where human rights groups are well-established, such as the Philippines and Sri Lanka, were instrumental in sharing strategies and experience as consultants and regional colleagues.

III. COMING TRENDS

It is difficult to talk about the future of the region without focusing on China as a rapidly expanding economic and military power. In the area of human rights, China plays a key role as well. If in the wake of Deng Xiaoping's death the political leadership is able to embark on more liberal and rights-respecting policies—for example, becoming a party to the human rights covenants, releasing prominent dissidents, revising the judgment on Tiananmen, and allowing a wider margin for dissent—this may well allow the resurgence of long-suppressed popular interest in human rights groups. In the long term, the opening of China to independent groups might even redirect foreign funding for NGOs from other regions.

Again, the example of Cambodia offers intriguing possibilities for the course of development of NGO movements in countries such as China or Vietnam. A peculiarity of Cambodia was the particular rapidity with which women's human rights groups organized and came together at the time of the drafting of the country's new constitution. Aided by activists from countries around the globe, they successfully lobbied the new National Assembly to include some of the most comprehensive guarantees for women's rights.²⁹ This success cannot be attributed simply to imported help. Cambodian women activists from party front organizations and diaspora groups took leadership roles in a wide range of non-governmental groups. That they united at a critical juncture suggests that similar activism is latent even in very repressive or war-torn societies.

More immediately, China's treatment of Hong Kong has serious implications for the regional human rights movement. In the last five years, Hong Kong has experienced a sudden growth in domestic human rights organizations; a number of regional and international groups have based their offices in the territory, both to take advantage of its strong rights protections and free flow of information, and to

28. See *infra* notes 31-32 and accompanying text.

29. See Constitution of Cambodia, ch. III, The Rights and Obligations of Khmer Citizens, arts. 36 (guaranteeing equal rights of Khmer citizens of either sex to employment, equal pay for equal work including housework, social security, and participation in trade unions), 45 (prohibiting discrimination against women and exploitation in marriage), and 46 (protecting job tenure during pregnancy, and mandating social assistance to rural women).

bolster them during the transition.³⁰ At this point, the prospect looks bleak for the preservation of Hong Kong's free atmosphere, with China having unseated the freely-elected legislature, repealed key provisions of the local bill of rights, and reinstated restrictions on free assembly and association.³¹ So far, the new Hong Kong government tolerates political demonstrations and critical human rights reports. Local groups, however, may eventually find their efforts to maintain regional and international connections regulated under Article 23 of Hong Kong's Basic Law, which forbids ties to "foreign political organizations,"³² a term that China's government might interpret as applying to human rights groups.

Within Asia's established human rights movement, the focus on economic and social rights and development is likely to continue and deepen. Issues that transcend national borders will continue to generate collaborative and regional approaches; among such issues are the mistreatment of migrants, trafficking in human lives for prostitution or bonded labor, and human rights abuses that are the byproducts of dam projects and regional deforestation. Local issues, such as land rights, child labor, and environmentally debilitating development, will continue to be a subject for comparison and cooperative advocacy among groups.

These issues are already drawing a new set of transnational actors into the human rights debate. The employment of sanctions and aid conditionality by Western governments is disfavored by some Asian NGOs as a lever for change,³³ but the influence of outside interlocutors is readily acknowledged. NGOs will seek to make human rights a more prominent factor in development planning and funding, just as the environmental lobby established new criteria for institutions such as the World Bank. Foreign development NGOs and international development agencies such as the United Nations Development Program and the World Health Organization may be enlisted increasingly to address problems such as internal displacement and threats to health and safety. International corporations can be expected to be-

30. In the last two years, international groups such as Human Rights Watch and Amnesty International have expanded their offices there. Greenpeace has also situated its regional office in Hong Kong, and regional groups such as the Asian Legal Resource Center, the Asian Monitor Resource Center, the Asian Migrants Center and Documentation for Action Groups in Asia have their headquarters there.

31. See Prepared statement by Mike Jendrzeczyk, Washington Director, Human Rights Watch, before the Senate Foreign Relations Committee, submitted Apr. 24, 1997, Federal News Service (May 24, 1997), available in LEXIS, News Library, Curnws File; Kristin Choo, *Zero Hour for Hong Kong*, 83 *May A.B.A. J.* at 70 (1997).

32. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, art. 23 (1990).

33. This view is predominant in South Asia. NGOs in other areas, however, have sometimes endorsed such measures, particularly where the government is perceived as unresponsive or particularly intransigent.

come a target of advocacy on issues ranging from labor rights to discrimination to evictions for development projects.

The inter-regional exchange of activists and ideas is likely to deepen, but faces challenges such as the determination of many Asian governments to censor the Internet. In September 1996, ASEAN governments announced a collaborative effort to study ways to regulate the Internet for content.³⁴ Indeed, many have already acted to narrow public access, vet Internet Service Providers, censor Usenet groups, or impose filtration software to black out certain sites or topics with the explicit intention of suppressing human rights information.³⁵ Governments have also tried to thwart regional collaboration between activists through means such as visa denials, deportations, and delicensing of groups.

NGOs are likely to play a key role in coming years, not only in monitoring and exposing abuses, but in standard-setting as well. This is due to Asia's unique position as the only region of the world without a regional intergovernmental mechanism for the protection of human rights. Although many Asian NGOs have called for a regional commission or tribunal, Sidney Jones³⁶ has argued persuasively that no such mechanism is likely in the near future at either the regional or sub-regional level because of interstate rivalries, the lack of universal acceptance of international standards, and the significant number of authoritarian states that are intolerant of Asian, much less foreign criticism.³⁷ There have been several efforts to fashion a region-wide Asian NGO commission, complete with a declaration of standards, but none have yet gained the sort of acceptance and authority that would make them a substitute for an intergovernmental mechanism.³⁸

Nevertheless, both U.N. and national mechanisms for the protection of human rights are gaining hold in Asia, and both are very dependent on information from NGOs for effective functioning. In Hong Kong, for example, NGOs have had a profound impact on the response of human rights treaty bodies to the government's periodic reports over the past four years through meetings with visiting members. Some countries have encouraged visits by special rapporteurs and working groups of the U.N. Commission on Human Rights to

34. See Human Rights Watch, *Silencing the Net: The Threat to Freedom of Expression On-line 11* (May 1996).

35. *Id.* at 3, 10-16.

36. Executive Director, Human Rights Watch/Asia.

37. See generally Jones, *supra* note 20.

38. The most recent is a Charter of Asian Human Rights promoted by the Asian Human Rights Commission and the Asian Legal Resource Center of Hong Kong, which is currently being circulated to hundreds of NGOs for comment. See *Towards an Asian Human Rights Charter: The Draft of the Charter of Asian Human Rights* (on file with the author); see also Jones, *supra* note 20, at 276.

stave off international criticism.³⁹ In some cases, these visits can facilitate communication between NGOs and governments, as when requests from the Working Group on Disappearances led the Foreign Ministry of the Philippines to seek information from NGOs.⁴⁰ National commissions on human rights have been established in the Philippines, India, Indonesia, and Sri Lanka, and parliamentary commissions have been established in Thailand and Cambodia. These commissions have not only become fora where NGOs air local concerns but have also begun to meet with each other and NGOs regionally.

The efforts of Asian NGOs to assert a counterpoint to the diminished version of rights that their governments promote is likely to influence the global human rights movement into the next century. For example, in response to the demand from Asia, Human Rights Watch is examining how to incorporate economic, social, and cultural rights into its work, looking closely at the nexus of these abuses with civil and political rights violations. The preference of many (but not all) Asian activists for engagement over condemnation as a stance towards abusive governments will demand more nuanced measures of support from international counterparts. Just as dissidents such as Andrei Sakharov and Václav Havel inspired Asian activists to campaign for civil and political freedoms in the 1970s and 1980s, new generations will look to Aung Sang Suu Kyi, the Dalai Lama and Maha Gosa-nandha for their efforts to achieve social justice along with political and social reconciliation. It is these distinct approaches to rights advocacy that are likely to prove enduring, more than governmental efforts to dismantle the notion of the universality of basic freedoms.

39. Recent examples include the 1991 visit to East Timor by the Special Rapporteur on Torture, the 1994 visit there of the Special Rapporteur on Summary and Arbitrary Executions, the 1992 visit to the Philippines of the Working Group on Disappearances, and the 1994 visit to Vietnam of the Working Group on Arbitrary Detention. See Jones, *supra* note 20, at 274.

40. *Id.* at 275.