

BACKGROUND PAPER

THIRD MEETING OF THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

7th to 9th SEPTEMBER 1998, JAKARTA

**ITEM: HUMAN RIGHTS AND THE ECONOMIC CRISIS IN THE ASIA
PACIFIC**

BACKGROUND

After years of boom and expansion, the economies of East and South-east Asia face a stark economic contraction and its political ramifications. The sharp and sudden onset of the economic crisis affecting East Asia has had immediate and severe consequences for the enjoyment of human rights.

Food shortages, unemployment, collapsing purchasing power, and rising prices for the necessities of life have in turn led to concern about social cohesion and even some outbreaks of inter-communal violence.

The economic and political policies that were in place in the region prior to the crisis were promoted as the best way in which to tackle poverty and underdevelopment. Regional governments argued, and most observers agreed, that increased levels of development and prosperity would underwrite the improvement of respect for human rights - firstly economic and social rights and then, in due course, civil and political rights.

Now, however, the very people who were to be the beneficiaries of these policies have been plunged into poverty and despair.

In addition to the East Asian economic crisis itself, the response by the International Financial Institutions has generated its own controversy because of fears that the strict economic measures called for come at too high a social cost. In the absence of a social safety net, the consequences of widespread unemployment on the right to an adequate standard of living have been disastrous for many - access to food, housing, health, education and other key services has been curtailed as governments come under pressure to reduce subsidies and outlays.

In addition to concern over the impact of the crisis on regional countries, there has been widespread concern in neighbouring countries and amongst trading partners of the flow-on effects. This has given rise to an intense debate about the causes of the crisis, in particular the imbalance that had allowed purely economic factors to overshadow or

exclude social and political ones. Questions are now being raised about issues of governance, civil society, transparency and political reform.

For national human rights institutions, the crisis presents a challenge and a crucial opportunity. Now that the prevailing neo-liberal economic orthodoxy has been opened up to scrutiny, there is a pressing need for the ensuing debate to include constructive and informed input on the human rights dimension of economic development.

A substantial framework of international human rights law and practice and a large body of analysis has been developed on the relationship between economic development and the promotion and protection of human rights. However, mainstream political and economic policy making processes have proceeded without taking this material into account.

By drawing on the existing technical expertise in various inter-governmental, national and non-governmental bodies, National Human Rights Institutions can help shape the policies that will now be formulated to take the countries of East Asia through and beyond the present economic crisis.

PURPOSE

This paper surveys the effects of the economic crisis on the enjoyment of human rights and describes the international legal and policy framework that establishes relevant human rights norms. It highlights the lack of dialogue between orthodox economics and the international human rights system and points to possible areas in which common ground for such a dialogue can be found. Its conclusion focuses on the possibilities for National Human Rights Institutions in responding to the crisis.

RECOMMENDATIONS

Some possible courses of action which National Institutions may wish to consider include:

- promoting the early ratification of key human rights treaties
- promoting a debate on human rights in the context of economic and political reforms
- conducting national inquiries into specific examples of the human rights consequences of the economic crisis
- using their public profile to draw attention to the human rights consequences of the economic crisis
- influencing decision makers in government, business and international organisations by developing appropriate resources and expertise in interpreting and making use of the material generated by the UN's human rights system and other agencies and individual experts

- working with governments on developing policy/administrative structures that will help implement treaty obligations and monitor progress in their implementation
- working with UN and other international organisations to access technical assistance
- working with the business sector to encourage recognition of human rights and the development of co-operative approaches to promoting and protecting them
- working with NGOs to identify the needs of vulnerable groups and to develop successful strategies/programs to respond to those needs
- making use of the UN system, including the human rights treaty bodies (especially the Committee on Economic, Social and Cultural Rights), specialised agencies (such as the ILO) in terms of what they can do to assist governments in discharging the international human rights obligations.
- drawing on the outcomes of relevant international conferences and plans of action (e.g. Habitat II, the World Summit on Social Development etc) to suggest concrete measures for improving the provision of housing, social security etc.
- addressing discrimination issues, in particular the needs of minorities and other vulnerable groups (e.g., migrant workers) are adequately protected.

HUMAN RIGHTS AND THE ECONOMIC CRISIS IN THE ASIA PACIFIC

What does the economic crisis mean for the cause of human rights in the Asia Pacific region?

INTRODUCTION

The economic crisis which has affected East and South-east Asia was stunning in its suddenness and severity. It has shaken the political foundations of several key countries and given rise to deep concern about the social consequences of both the economic collapse itself and the remedial measures promoted by the International Financial Institutions.

Almost overnight, countries that had experienced decades of rapid economic growth were facing falls in GDP of up to 15% and even 20%. According to World Bank officials some 400 million people were plunged into the crisis and World Bank reports have described the most serious social consequences as:

- acute food shortages
- exploding unemployment
- sharp price rises for essentials such as cooking oil
- severe shortages of medical supplies
- intense pressures on government spending on key infrastructure in areas such as health and housing

These are only the immediate consequences that have been identified. The flow-on effects will lead to much broader consequences that will affect the lives of many millions of individual men, women and children. Women's and children's rights will be particularly hard hit: previous experiences of structural adjustment programs have shown that as social services provided by government disappear, the burden for providing alternative services falls on women. There are strong fears that the present crisis will force millions of children out of the school system.

These problems are more than just an unfortunate consequence of the economic crisis: they have to be seen also as a challenge to the observance of human rights which demands the attention of national human rights institutions.

THE EAST ASIA ECONOMIC CRISIS

The dramatic turn-around of the region's economies confounded years of bullish optimism on the part of politicians and economists. It also called into question the orthodoxy which held that the tiger economies represented a paradigm for rapid, sustained economic growth within a framework of political stability and national unity.

A central tenet of the orthodoxy surrounding the “Asian economic miracle” was that specific attention to human rights was not necessary because economic development would underwrite future advances. The standard response to expressions of concern about human rights was that real progress was being made in improving standards of living and that, in time, this would enable the countries of the region to turn their attention to the question of civil and political rights as well. The first, and overwhelming, priority was economic growth.

What, then, is the prognosis for human rights now that those hard fought for improvements in living standards have been so severely reversed? How will governments respond to the needs of those plunged back into poverty by the loss of jobs and the collapse of currencies? What role do national human rights institutions have to play in ensuring that policy makers at home and abroad take proper account of the human rights dimensions of the crisis? What chance is there that the discourses of global economics on the one hand and human rights on the other will be able to find a common language?

To a large extent, the concerns being expressed in the wake of the East Asia economic crisis reflect those that became associated with the difficulties of structural adjustment policies implemented since the 1970’s. This is most clearly seen in reactions to the IMF and World Bank rescue packages. Even some supporters of the need for economic restructuring to accompany the rescue packages have warned of the dangers that harsh economic prescriptions pose to social cohesion and political stability. Widespread popular discontent amongst those hardest hit by the economic collapse has already turned to serious civil unrest in some areas as people reacted to decisions which raised the prices of staple goods and reduced scarce government services.

There are, however, indications that the debate generated by this economic crisis may have moved on in some significant ways, opening up the possibility of introducing explicitly human rights concepts. One of these has been the willingness of orthodox economic commentators to address squarely the nexus between democracy/good governance and economic performance. As *The Economist* editorialised in commenting on the crisis in an affected country: “rigidity and autocracy may have served to consolidate (its development); flexibility and democracy are now needed to safeguard its unity and allow its growth to continue”. Both within and outside regional countries, there are attempts to place the economic bottom line into a broader political and social framework.

Complementing the focus on democracy has been an analysis of values, specifically the notion of “Asian values”, and their relationship to the economic successes and failures of the Asian economies. It is in this context that human rights have most explicitly been addressed, even if only at a general level. That is, whether international human rights standards are indeed universal and whether they have application to, and meaning for, Asian nations.

Another, intersecting, line of enquiry has focused on the nature and consequences of globalisation. As the tiger economies face up to a period of sharp economic contraction, as millions of people face up to unemployment, and as regional financial markets experience the effects of currency collapses, there is a reassessment of attitudes to free trade policies. To quote *The Economist* again: "...there remains a big risk of an anti-western backlash as people lose their jobs, see foreigners buy up local companies, and generally force tough policies on weakened national governments. The next time the Asian values debate flares up, it may be in a new guise, concentrating not so much on individual freedom and human rights, and whether or not they are universal, but on the global financial system and its dominance by the West."

In some countries, the economic turmoil has posed direct challenges to the political and social *status quo*. Where economic strength has been seen to be concentrated in the hands of minority groups, human rights abuses have occurred as popular anger and frustration have found violent expression.

Yet another worrying dimension to the economic turmoil is the impact it may have on regional security. The 1998 meeting of the ASEAN Regional Forum has had to grapple with the fallout of the economic crisis even as it tries to promote confidence building measures in an environment where there are fears of an accelerating arms race. This again has implications for the promotion and protection of human rights. In addition to the long-held fears that a slackening of economic growth could unleash political and social instability, there is the difficult question of allocation of scarce resources as governments with rapidly contracting financial bases try to balance military budgets and burgeoning welfare claims.

ONE CRISIS, MANY DEBATES

Despite the widespread concern about the social consequences of the economic crisis, and the preparedness of some policy makers to challenge the overwhelming priority given to market-based economic imperatives, it remains the case that, in the view of mainstream economic policy makers, economics is economics, and human rights is human rights and never the twain shall meet.

Over the last fifty years, the human rights movement in general, and the United Nations in particular, have developed an immense body of analysis which argues that human rights and sustainable human development are interdependent and mutually reinforcing. In the case of the ILO, the human rights principles underpinning its activities are grounded in the emergence of social and labour movements at the turn of the century.

However, the economic discourse which dominates policy and public debates at the end of the century, has simply left no room for the language of rights. The critical decisions made in the cabinet rooms and boardrooms, on the trading floors and in the financial institutions have absolutely no regard for the impressive body of international human rights standards. When decisions about interest rates, government spending or wage rates are made, we can be sure that it is the views of credit ratings agencies such as Moody's

which count, and not those of the UN Committee on Economic, Social and Cultural Rights.

Despite its dominance, however, the free trade/globalisation agenda has started to come under fire from several quarters. As the apparent consensus on the prevailing economic growth model begins to falter, discontent is being expressed even in those regional countries which have not been the direct victims of the economic crisis.

Some regional leaders and an increasing number of commentators have expressed concern about the challenge which global markets pose **to sovereign states' ability to dictate their own economic agenda**. As international trade obligations assert themselves more strongly, there are questions being raised about the implications for governments in the discharge of their obligations in areas of social expenditure, including health, education, housing and communications. The Multilateral Agreement on Investment (MAI) currently being negotiated within the OECD, has elicited strong opposition from disparate groups worried that standards of consumer and environmental protection will be lowered and that distinctive national cultural values will be undermined. Part of the response to these developments has been a call for governments to reverse recent trends and once again to start investing in social capital and the provision of core services by government.

The economic crisis has refocussed attention **on international development cooperation policies**. Over recent years, donor countries have sought to tailor their international aid to achieve poverty reduction within a sustainable development context. This has entailed a rethinking of traditional approaches to development cooperation and has seen a more holistic approach to promoting human rights through practical measures that assist in the building of domestic capacity and national institutions. This shift in focus has been welcomed by international development NGOs which have been arguing for some time for a human rights based approach to development assistance. The way in which the economic crisis influences broader foreign and trade policy will be interesting to follow. Perhaps the rigid dichotomies that have traditionally separated the various strands of foreign and trade policy may need to be re-assessed in the light of the evidence which is now emerging of the close, and often complex, linkages between economic performance and good governance.

The economic crisis has also fed into a mood of anxiety and resentment about the pace and direction of change wrought by **free trade and globalisation**. Populist sentiment against the neo-liberal economic policies that have dominated the past decades is gaining momentum and bringing with it a disturbing mixture of isolationism and xenophobia aimed not just at foreign capital markets, but at foreigners themselves. As the promise of prosperity gives way to the consequences of sharper international competition, those sectors of society who feel they have been left behind or even betrayed by the political and economic elites are proving fertile ground for the proponents of racist and illiberal views.

These various debates intersect as diverse groups seek to articulate and prosecute their causes. Faced with the rise of anxiety and disaffection, governments are finding they can no longer take for granted the political allegiances that have characterised the last few decades. As the verities of the recent past start to weaken, governments searching for a fresh approach may do well to consider the address by the UN High Commissioner for Human Rights to the Round-table on Human Rights and Extreme poverty held in Geneva on 24 March 1998. The High Commissioner suggested that decisions about priorities in the quest for development “can be made easier by using the language and standards of human rights and placing the decision making process firmly in the context of the government's international human rights obligations. These obligations stretch also to international organisations ...”.

THE INTERNATIONAL HUMAN RIGHTS CONTEXT

Despite the widespread expressions of concern about the broad socio-political implications of the economic crisis, there has been almost no discussion of what it means in specifically human rights terms. It is important for human rights practitioners and national human rights institutions to be clear about the human rights impacts.

To the extent that human rights have entered the debate, the focus has been on economic and social rights. This is understandable given that the most visible consequences of a severe economic downturn include unemployment and severe constraints on social expenditure, such as on health, education and housing.

However, this debate has tended to fall into the trap of confusing economic and social rights (ie, rights vested in individuals), with the process of *national* economic development. The Right to Development is clearly central to this discussion. However, care must again be taken to ensure that this right is properly seen as a being vested in the individual.

And, of course, the state of the economy has a major impact on the way in which civil and political rights are promoted and protected. Although it is often said that civil and political rights are those in which the state is required to *refrain* from certain actions (as opposed to economic, social and cultural rights which require the outlay of state resources), it is clear nevertheless that the safeguarding of these rights cannot be quarantined from economic realities.

In defining which rights are in question, the most appropriate way for the purposes of this paper is to refer to the body of international human rights law.

Human Rights - Which Rights?

The three key goals of the UN are peace, development and human rights. The UN Charter commits member states to *promote social progress and better standards of life in larger freedom*. This elegantly encapsulates the interrelatedness of economic and social development with the advancement of human rights.

This commitment was subsequently elaborated in the International Bill of Rights i.e., the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. While the Universal Declaration is not a legally binding instrument, it has great moral force and over time many of its provisions have come to be accepted as part of customary international law. The Two Covenants, translated into legally binding international treaties the rights set forth in the Universal Declaration.

The core human rights instruments are contained in six treaties that are legally binding for all countries that have signed and ratified them. Most of their provisions are relevant in some way to the effects of the economic crisis.

The International Covenant on Economic, Social and Cultural Rights (1966).

This covenant sets out the right to work; the right to form trade unions and to strike; the right to social security and social insurance; the right to an adequate standard of living, including the right to food, clothing and housing; the right to health; the right to education; and the right to protection of the family. The right of self-determination and the right to equality and freedom from discrimination are contained both in this covenant and in the Covenant on Civil and Political Rights. Both Covenants state that: *In no case may a people be deprived of its own means of subsistence*.

The International Covenant on Civil and Political Rights (1966).

In addition to the right of self-determination and the right to equality and freedom from discrimination, this covenant sets out the right to life; the right to freedom from torture and slavery; the right to liberty and security of person; the right to freedom of movement and residence; the right to equal protection of the law; the right to privacy; the right to freedom of thought, conscience and religion; the right to freedom of expression; the right to freedom of assembly and association; and the right to take part in the conduct of public affairs.

The International Convention on the Elimination of All Forms of Racial Discrimination (1965)

This convention is of particular significance in ensuring against discrimination or exclusion from development. The convention reiterates that there can be no discrimination in the enjoyment of the economic, cultural, social, civil and political rights set out in the Universal Declaration of Human Rights.

The Convention on the Elimination of All Forms of Discrimination against Women (1979).

This convention seeks to ensure against discrimination or exclusion of women from development and sets out the right of women to participate in political, economic and social life. Detailed articles prohibit discrimination against women in employment and health. Article 14 is of particular importance because it sets out a virtual agenda of development for rural women as a matter of right.

The Convention on the Rights of the Child (1989)

This convention is of significance as it has almost achieved universal ratification: only one country has neither signed nor ratified the Convention, and one other has signed but not ratified. The Convention then, can be seen as the most emphatic statement of the universality of human rights. It reaffirms children's right to life; right to identity and nationality; right to freedom of expression; right to freedom of thought, conscience and religion; right to freedom of association and assembly; right to privacy; right to access to information; right to protection against violence, abuse and neglect; right to health; right to education; right to an adequate standard of living; right to social security; right to rest and leisure; right to freedom from exploitation; right to freedom from trafficking in children and protection against child prostitution; right to freedom from torture and cruel, inhuman or degrading treatment; and rights with respect to criminal process. The convention deals with survival rights, rights of participation and the right to development of the child. Thus it establishes a development agenda for children.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

This convention provides protection against torture and other cruel, inhuman, or degrading treatment or punishment. The provisions relating to cruel, inhuman or degrading treatment are of special relevance to development activities and their impacts.

The United Nations Treaty Bodies

Each of the six core human rights treaties has an associated treaty body (committee) to monitor the compliance by signatory states with obligations under the treaty and to examine, periodically, states' reports on obligations under the treaty. Some of the treaties - the Covenant on Civil and Political Rights, the Convention against Torture - create procedures allowing individuals to bring complaints of violations, and there are moves to create similar procedures with respect to the Children's Convention, the Women's Convention and the Covenant on Economic, Social and Cultural Rights.

Expert Views on the Impact of Globalisation

The treaty bodies also play a crucial role in defining the content of the rights set out in treaties and in developing the jurisprudence associated with the treaties. For the purposes of this paper, the work of the Committee on Economic, Social and Cultural Rights is of particular interest.

At its most recent session (18th Session, April-May 1998) the Committee held a Day of General Discussion on *Globalisation and its impact on the enjoyment of economic and social rights*. The Committee also adopted a statement entitled “Globalisation and Economic, Social and Cultural Rights”. The Committee also adopted comments on “Human Rights and Development” and on “United Nations Reform and the UN Development Assistance Framework (UNDAF) Process (see below).

The Committee saw globalisation as a “phenomenon which has wrought fundamental changes within every society”. It summarised the main developments associated with globalisation and concluded that while none of these are in themselves necessarily incompatible with the Covenant on Economic, Social and Cultural Rights, collectively and without proper safeguards, globalisation carries the risk of “downgrading the central place accorded to human rights by the United Nations Charter in general and the International Bill of Human Rights in particular.”

The Committee spelt out some of the consequences for the enjoyment of economic, social and cultural rights:

Thus, for example, respect for the right to work and the right to just and favourable conditions of work is threatened where there is an excessive emphasis upon competitiveness to the detriment of respect for the labor rights contained in the Covenant. The right to form and join trade unions may be threatened by restrictions upon freedom of association, restrictions claimed to be “necessary” in a global economy, or by the effective exclusion of possibilities for collective bargaining, or by the closing off of the right to strike for various occupational and other groups. The right of everyone to social security might not be ensured by arrangements which rely entirely upon private contributions and private schemes. Respect for the family and for the rights of mothers and children in an era of expanded global labor markets for certain individual occupations might require new and innovative policies rather than a mere laissez-faire approach. If not supplemented by necessary safeguards, the introduction of user fees, or cost recovery policies, when applied to basic health and educational services for the poor can easily result in significantly reduced access to services which are essential for the enjoyment of the rights recognized in the Covenant. An insistence upon higher and higher levels of payment for access to artistic, cultural and heritage-related activities risks undermining the right to participate in cultural life for a significant proportion of any community.

The Committee concludes that all of the risks elaborated can be guarded against and addresses in particular the roles that international organisations such as the World Bank, IMF, WTO and OECD can play in this.

Over the years, the Committee on Economic, Social and Cultural Rights has developed an important body of work which helps define what obligations states have in terms of the progressive realisation of economic, social and cultural rights. At its Tenth session (16 May 1994) the Committee discussed “The role of social safety nets as a means of protecting economic social and cultural rights, with particular reference to situations involving major structural adjustment and/or transition to a free market economy”. The Committee has also made important contributions to the various UN global conferences.

A DEVELOPMENT FRAMEWORK FOR HUMAN RIGHTS: A HUMAN RIGHTS FRAMEWORK FOR DEVELOPMENT

The UN General Assembly in 1957 said that “a balanced and integrated economic and social development would contribute towards the promotion and maintenance of peace and security, social progress and better standards of living, and the observance of and respect for human rights and fundamental freedoms” resolution 1161 (XII).

The International Conference on Human Rights, held in Teheran in April/May 1968, said “that the enjoyment of economic and social rights is inherently linked with any meaningful enjoyment of civil and political rights and that there is a profound interconnection between the realisation of human rights and economic development”.

The World Conference on Human Rights held in Vienna in June 1993 was widely seen as crucial for its endorsement of the universality, indivisibility, interdependence and interrelatedness of all human rights. The Vienna Declaration and Program of Action adopted by the Conference also made clear that “Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing”.

In the past decade, a series of thematic UN global conferences has reinforced and elaborated on this message. The 1990 World Summit for Children, the 1992 Earth Summit, the 1994 World Summit for Social Development, the 1994 Conference on Population and Development, the 1995 World Conference on Women, the 1996 Conference on Human Settlements (Habitat II) and the 1997 World Food Summit all adopted comprehensive action plans which highlighted the political and economic context in which human rights are best advanced. That context can best be considered within the framework of the right to development.

The Right to Development

The International Bill of Rights contained an implicit articulation of such a right, which provided a unifying framework for the realisation of all civil, political, economic, social and cultural rights. The decision to draft two covenants, however, had the unfortunate consequence of deflecting focus from a holistic approach to human rights to one that tended to place one set of rights (civil and political) over and above another (economic, social and cultural). The adoption by the UN General Assembly in 1986 of the *Declaration on the Right to Development* was therefore very significant. As well as explicitly affirming the existence of a human right to development, it healed as it were the artificial distinction between the two sets of human rights which had developed following the adoption of the Two Covenants.

The actual content of the right to development has been subject to intense debate. In response to this, the UN has established working groups on the right to development. The first working group looked at what the right entails and the second addressed the obstacles to its realisation. Despite the at times vigorous debate surrounding the meaning of the right to development, it is important to note that there an international consensus on this right has been formally articulated in many forums, most notably in the Vienna Declaration and Program of Action (adopted by the 1993 World Conference on Human Rights), and in a resolution of the UN Commission on Human Rights.

The Declaration expressly recognises development as an “inalienable right”, vested in individuals and peoples, although the individual is identified as “the central subject of development”. The Declaration recognises the right to self-determination, including peoples’ “inalienable right to full sovereignty over all their natural wealth and resources”. It also places the right to development in both a national and international context and in so doing sets out a number of obligations for states at both a domestic (individual) and international (collective) level.

The declaration defines development as “a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals”. The Declaration affirms, perhaps more strongly than other international human rights instruments, the principle of the indivisibility and interdependence of all human rights i.e., it calls for equal attention to be given to the promotion, protection and implementation of economic, civil, cultural, political and social rights. It also stresses the right to non-discrimination in development “without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Although the Declaration does not have legal force, it does elaborate the content of the right as well as the specific obligations for states and governments (both individually and collectively) that flow from the right. Most importantly, the right to development has been reiterated and further elaborated-by consensus-at the UN World Conference on Human Rights (Vienna), the International Conference on Population and Development (Cairo), World Summit on Social Development (Copenhagen) and the Fourth World

Conference on Women (Beijing). Each of these conferences unanimously (by consensus and not by vote) reaffirmed the right to development as a "universal and inalienable right and an integral part of fundamental human rights" (Article I (10) of the Vienna Declaration, Principle 3 of the Cairo Programme of Action, Commitment 1(n) of the Copenhagen Declaration and Article 213 of the Beijing Platform of Action).

The relevance of the Right to Development to the economic crisis is well articulated by the following quote from the report of the UN Working Group on the Right to Development: "the right to development involves more than development itself: it implies a human rights approach to development". While this conceptual framework is of itself useful, for national human rights institutions, the framework of the Right to Development offers much more especially in the area of technical cooperation and practical, programmatic assistance.

The Office of the High Commissioner for Human Rights has recently concluded a Memorandum of Understanding with a regional country which will provide for assistance in areas such as implementation of a national plan of action for the promotion and protection of human rights, the strengthening of national capacities, human rights education, strengthening of the national human rights commission and strategies for the realisation of the right to development and economic, social and cultural rights

The United Nations Development Assistance Framework

The UN, its specialised agencies and its development agencies, notably UNDP, also have an important role to play in the realisation of the Right to Development . The United Nations Development Assistance Framework (UNDAF) process will apply in relation to the country level activities of all UN agencies, including UNDP, UNICEF and UNFPA. The United Nations Development Group (UNDG) Ad Hoc Working Group on the Right to Development has been established to develop a common approach for ensuring that the human rights dimension of development activities is properly integrated into country level activities. One of the key early steps in the process has been the development of a set of "Provisional Guidelines". These are currently being tested in 18 countries which agreed to participate in a pilot project that will help refine the Guidelines before they are adopted and applied generally.

The United Nations Development Program (UNDP) has adopted a comprehensive policy for integrating human rights with sustainable human development. The policy (detailed in the 1998 UNDP policy document *entitled Integrating Human Rights with Sustainable Human Development*) places the promotion of human rights at the centre of UNDP's activities in keeping with the UN reform program initiated by Secretary-General Kofi Annan (*Renewing the United Nations: a Program of Reform*). The policy is predicated on a partnership with the UN's Office of the High Commissioner for Human Rights.

The International Labour Organisation

The ILO has developed an extensive body of international norms that relate very directly to the linkages between economic development and human rights. The origins of the organisation were shaped by the social, political and economic upheavals that followed the First World War. The ILO set itself the task of promoting and raising labour and social standards with a view to advancing social justice and ensuring world peace. In drawing attention to the linkages between social justice and peace, the ILO anticipated the fundamental goals of the UN Charter.

Out of the more than 170 Conventions and 180 Recommendations which the ILO has adopted, the Organisation has identified a small number which it holds to be central to its mission as they deal with core human rights issues.

National Action Plans On Human Rights

The national, programmatic approach of the UNDP fits in well with the development and use of National Action Plans for human rights. The 1993 World Conference on Human Rights recommended that each State pursue the development of National Action Plans. National Action Plans are particularly relevant to members of the Asia Pacific Forum because three of their governments have adopted such plans.

The UN Office of the High Commissioner has characterised the national action plan approach as a model for the promotion of human rights. It is based on a simple premise: no country has a perfect human rights record, and no country can realistically take action to implement fully all of its human rights obligations. Therefore, a voluntary, systematic approach which takes each country's specific circumstances as the starting point for time-bound national program of action represents a practical and realistic model. It is a model that requires a whole-of-government approach to human rights and which gives civil society a key role. It also provides for a continuing process of monitoring and review. Real progress can be measured against benchmarks. In relation to economic and social rights, this complements perfectly the recommendation of the World Conference on Human Rights that each country develop a system of indicators to measure progress in the realisation of the rights set forth in the International Covenant on Economic Social and Cultural Rights. For countries in economic transition, in particular, there is a real need to monitor the human rights impacts of macroeconomic policies.

THE INTERNATIONAL FINANCIAL INSTITUTIONS (IFIs)

While the UN's human rights have been totally ignored by the mainstream media reporting and analysing the Asian economic crisis, the IFIs have played a starring role.

The World Bank

The Bank states that its core mandate and overriding objective is the reduction of poverty, and it explicitly sees a role for itself in the promotion and protection of human rights. Recognising that freedom from poverty is a basic freedom, the Bank sees its role in poverty reduction as consisting mainly in "assisting its borrowing members to create macroeconomic framework conducive to growth and microeconomic conditions which help expand production and trade, in addition to its major role in the financing of projects and program for human resources development, infrastructure and a broad array of productive purposes."

The World Bank also has a clearly articulated commitment to social protection. This is aimed at: "(i) assisting the poor in a participatory and growth-enhancing manner (such as Social Funds and proactive measures against harmful child labour); (ii) protecting the working population against major income risks (such as old age and unemployment) in the least distortionary way possible, while maintaining a fiscally sound and growth-orientated approach; (iii) helping the non-employed to gain access to productive employment (through job placement, training, or public works) and (iv) balancing the labour market because gainful employment is the best social protection."

Between July 1997 and July 1998, the World Bank had pledged up to \$US16 billion to the East Asia region and had disbursed \$US8 billion in loans. The Bank has identified the crisis as both a *financial* and *human* one. In Thailand, Indonesia, Korea and Malaysia, the Bank is funding the provision of emergency food and medical supplies, the establishment of social safety nets, poverty alleviation, income generation projects, basic education, assistance to rural communities affected by the *El Nino* weather pattern, health care, and a variety of training and monitoring programs.

The assistance is a combination of broad budget support (that enables governments to maintain expenditure in social sectors) and direct community support. The Bank's aims are to: help protect and improve the quality of public expenditure targeted to the poor via health, education and social programs; help design social funds together with civil society; and to help strengthen social security systems for the poor and improved coverage for the unemployed.

The Bank's Managing Director, Sven Sandstrom, in an address to the Bretton Woods Committee in Washington on 13 February 1998 spoke of the lessons learned from the East Asia crisis. They are worth quoting:

"First, we have learned that we need a clearer separation between public, financial and corporate sectors. Second, we have learned that we need more transparency and better information from these sectors; Third, we have learned that even in countries with a very strong growth performance, corruption, weaknesses in the financial sector and in corporate governance can undercut their economic achievements; hence even in countries which will be "emerging markets" in the next generation, we need to focus now on

building proper legal and regulatory frameworks, and strong institutions. We cannot delay this work”

This is remarkably close to the analysis which underpins the UNDP’s human rights-based approach to sustainable human development. Clearly, there is a lot of common ground between the economic and social/human rights sides of the UN’s “house”. Just as clearly, there is much work to do in bringing about meaningful co-operation between these two sides.

The International Monetary Fund (IMF)

The IMF adopts a rather different position to the World Bank. The IMF sees its role strictly in terms of safeguarding the international monetary system. In relation to the East Asia crisis, it saw as its clear priority helping restore confidence to the economies affected by the crisis.

At the heart of the IMF programs was a program of “forceful, far-reaching structural reforms” focused on the comprehensive reform of financial systems. The IMF also addressed governance issues, such as improving transparency, breaking the close links between business and government and liberalising capital markets. The IMF’s reform efforts have been, according to the Fund, “invaluably aided by the World Bank and the Asian Development Bank.

The IMF, in contrast to the World Bank, has shied away from any human rights linkages in its work. At a press briefing in Washington on 4 May 1998, senior IMF officials were asked about the IMF’s likely reaction should authorities in countries receiving assistance commit human rights abuses:

“Obviously, every government that votes in the Board of the IMF to support a loan like this is making a calculation of which way does more good: to try to mitigate economic hardship and work with a government on these issues; to try to persuade them to improve their record or to withdraw support and let the economic circumstances worsen and hope in that way to achieve improvements.....if, indeed there were significant, large, visible problems on that (human rights) front, I think that the governments that support this loan and that have voted for it will draw conclusions.”

The IMF does make some small concessions to the social consequences of its programs. IN response to the East Asia crisis, and to criticism levelled at the IMF, the Fund reports that a strengthened level of dialogue with a variety of constituencies was initiated, including consultations with labour groups. The IMF has also acknowledged that “much hard work remains to be done in the affected countries in terms of economic restructuring and the temporary adverse effects that it can have on output and employment”. As part of its intermediate goal, the IMF has identified the need to alleviate “the social costs of adjustment, including through strengthening the social safety net and encouraging a social dialogue among employers, employees and government.”

Where the IMF does acknowledge that its mandate has broadened in recent times is in the area of governance. The IMF's Managing Director, Michel Camdessus, has said that: "Good governance has taken on increasing importance in the IMF's traditional mandate of promoting economic stability and what I call high quality growth. Today, not only have governance issues moved to the forefront of discussion, but in many cases government reform has moved to the top of the policy agenda." The IMF has since July 1997 instituted a set of guidelines for its staff on governance matters.

Despite the rigid and narrowly-focused agenda which the IMF sets itself in relation to economic crises such as the one affecting East Asia, there is clearly an important area of overlap between its own priority areas and those identified by the UN's human rights and development agencies.

CONCLUSION

The East Asian economic crisis has captured the world's attention. A good deal of that attention has focused on the severe social consequences of the economic downturn, however, there has been only limited attention given to the effects of the crisis on specific human rights.

It is clear that the crisis has severely compromised the enjoyment of the right to work and, as a direct consequence, the enjoyment of the right to an adequate standard of living, including:

- adequate food
- adequate clothing
- adequate housing

It is also clear that the rights to health, education and social security have been curtailed.

Civil and political rights have also been affected, in particular the rights of certain ethnic minority groups.

For National Human Rights Institutions this situation presents, in the first instance, a serious challenge. It calls for a frank appraisal of how the present performance of National Institutions measures up in the context of the crisis. This would include an assessment of:

- the public profile of National Institutions and their capacity to promote awareness of the human rights dimensions of the crisis
- how well National Institutions are handling individual complaints about the violations of rights, including economic, social and cultural rights and the impact of development activities
- the level of expertise on the international human rights system available within National Institutions, especially in relation to economic and social rights and the right to development

- the capacity of National Institutions to conduct national inquiries into human rights issues that can assist policy makers (in national governments and international organisations) to properly address human rights concerns.

However, the crisis also presents a valuable opportunity for National Institutions to ensure that constructive and robust input from a human rights perspective is given to key policy making bodies. By mobilising relevant information and putting forward well thought out proposals, National Institutions can establish themselves as a natural partner to the economic and political institutions that have traditionally dominated public policy and often marginalised the human rights perspective.

Empirical evidence has shown that stable, prosperous and creative societies depend on the realisation of all human rights. The argument that realisation of rights can wait until economy is fully developed has been dealt a severe blow.

The challenge now is to generate the necessary political will to get the right legislation and policies in place to translate the promises in the International Bill of Human Rights into practical outcomes.

Some possible courses of action which National Institutions may wish to consider include:

- promoting the early ratification of key human rights treaties
- promoting a debate on human rights in the context of economic and political reforms
- conducting national inquiries into specific examples of the human rights consequences of the economic crisis
- using their public profile to draw attention to the human rights consequences of the economic crisis
- influencing decision makers in government, business and international organisations by developing appropriate resources and expertise in interpreting and making use of the material generated by the UN's human rights system and other agencies and individual experts
- working with governments on developing policy/administrative structures that will help implement treaty obligations and monitor progress in their implementation
- working with UN and other international organisations to access technical assistance
- working with the business sector to encourage recognition of human rights and the development of co-operative approaches to promoting and protecting them
- working with NGOs to identify the needs of vulnerable groups and to develop successful strategies/programs to respond to those needs
- making use of the UN system, including the human rights treaty bodies (especially the Committee on Economic, Social and Cultural Rights),

specialised agencies (such as the ILO) in terms of what they can do to assist governments in discharging the international human rights obligations.

- drawing on the outcomes of relevant international conferences and plans of action (e.g. Habitat II, the World Summit on Social Development etc) to suggest concrete measures for improving the provision of housing, social security etc.
- addressing discrimination issues, in particular the needs of minorities and other vulnerable groups (e.g., migrant workers) are adequately protected.

Many of these individual elements could be part of a coherent national strategy incorporated in a *National Human Rights Action Plan*. National Action Plans have already been developed and are being implemented by a number of countries represented in the Forum. They provide an excellent means by which National Institutions can fulfil the role envisaged by the Vienna World Conference on Human Rights, in particular in *their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights*.