



Rights Beautiful

Collection of Professor Saneh Chamarik



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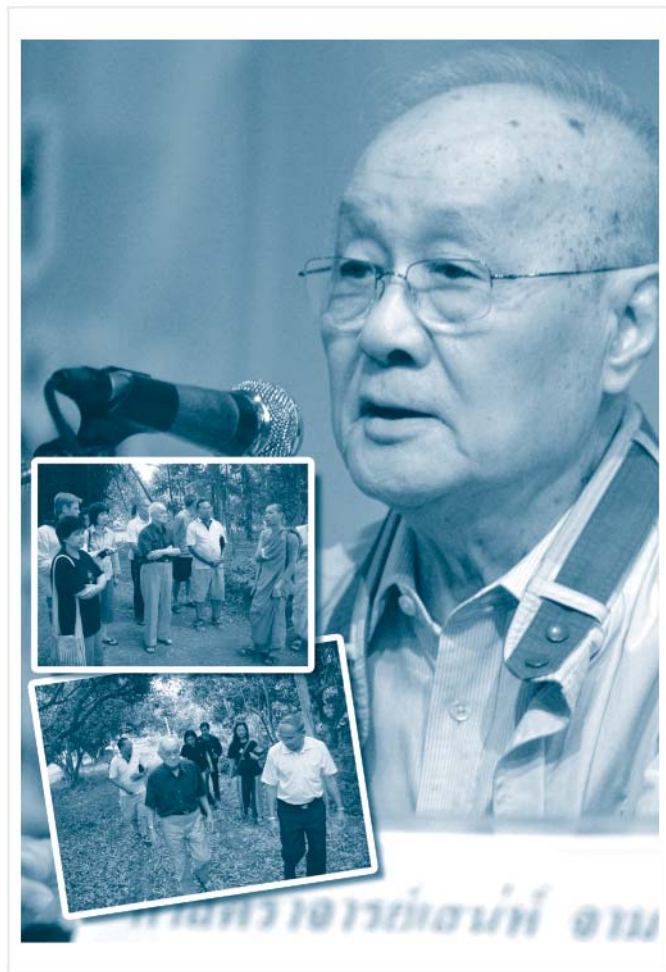
**OFFICE OF THE NATIONAL HUMAN RIGHTS
COMMISSION OF THAILAND**



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ASEAN Human Rights: Prospects for Convergence*

Saneh Chamarik
Chair, National Human Rights
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Madam Director General Atchara Suyanan of the Ministry of Foreign Affairs, Distinguished Delegates, Friends, Ladies and Gentlemen

The 3rd Workshop on the ASEAN Mechanism on Human Rights is coming to its closing session. May I first of all, on behalf of the Thai NHRC, express our appreciation for your valuable participation in the past two long days of discussions. I myself have learned a good deal. After all the presentations and instructive dialogues together with questions and clarifications, I wish to speak my part that hopefully is of something positive to furthering our common cause here.

In retrospect

When the NHRC of Thailand joined in the 2nd Workshop on ASEAN Human Rights Regional Mechanism in Manila last year, as a new comer, what immediately came to mind was the dialogue of peace and transformation in the Asia-Pacific region some twenty years ago, where I also took part. A substantial part of dialogue focused specifically on Southeast Asia

* Concluding remarks at the 3rd Workshop on the ASEAN Regional Mechanism on Human Rights, Bangkok, 27-29 May 2003.

with a view to overcoming all the politico-military discrepancies and contradictions, as well as promoting cohesiveness and solidarity, within the region. The impressive record of the Southeast Asian peoples' resourcefulness and resilience was well taken note of in their long history of struggles for freedom and progress. It remained the question of how all these potential endogenous qualities could be mobilized with a collective sense of positive and creative regionalism. This was not only to serve as countervailing force vis-à-vis the untoward intrusion of external powers, but also positively to collaborate in the common task of socio-economic reconstruction. And along with that, re-conceptualizing the norms and practices of human rights and freedom in the global framework of peace, security, and justice. Then, thanks to the foresight of the leaders of the time, the non-military ASEAN of 1967 made the great and positive departure from the SEATO era of bipolar confrontation, thus paving the path for reconciliation and mutual trust.¹ But, as we all know, it was only after the collapse of the Berlin Wall and the Soviet Empire in early 1990 that the way was open for effective rapprochement among the Southeast Asian neighbors, and thus spontaneous entrance into the open arms of ASEAN.

My point of recalling our recent past is certainly not to revive all those previous nightmares of falling prey to the international politics of great powers' rivalries and domination. That should absolutely be things of the past, with ASEAN as institutional framework for creative and forward looking in the current world of rapid and radical change. With a certain looking back, I believe, it would greatly help put our common task here in proper perspective. At this point, it is obvious that, in terms of both time and space, the dialogues on an ASEAN human rights mechanism that have persistently and progressively been going on ever since the 1997 ASEAN Vision 2000, are quite achievements in themselves. That is, against the background of

¹ Saneh Chamarik, "Towards Positive Regionalism in Southeast Asia", paper delivered at the conference on Peace and Transformation in the Asia-Pacific Region, Yokohama, Kanagawa, Japan, 26-29 March, 1984.

diversity and discrepancies that we are living with. For all this bold and continuing endeavour, and on behalf of the NHRC of Thailand, I should like to express our heart-felt gratitude and deep appreciation. Thanks also to all the initiatives taken in earnest response to the 1993 Vienna Declaration and Programme of Action, as kindly described in Prof. Vitit Muntarbhorn's concept paper on Roadmap for an ASEAN Human Rights Mechanism, prepared particularly for this 3rd Workshop. With his clear mind, I must say, the paper greatly helps clarify to a new comer like myself as to the relevant issues involved in international dealing. It is indeed encouraging to learn that the whole idea draws approval right from the beginning at least on principle from all the parties concerned: governmental, academic, and civil society. If I am not mistaken, it is also embraced in the current Thai foreign policy with emphasis on elevating ASEAN onto "a higher plane of regionalism", along with "citizen-centred policy" and "mutual trust and understanding, mutual benefits, cooperation and partnership not just between the relevant governments but, equally important, between respective peoples of those countries", to quote Foreign Minister Dr.Surakiart Sathirathai's own words.² I do not know if this is in exact consonance with the former ASEAN Foreign Ministers did resolve to do in 1993, following the Vienna Declaration and Programme of Action. Hopefully, all this could be construed in a positive and creative manner towards the ultimate purpose of human rights protection and promotion. It is our job to pursue the matter further.

Towards people-to-people mutual learning

In the same vein and in spite of initial achievements, it is also important to bear in mind that the task of establishing a human rights regional mechanism is no simple matter. Saying this is not to minimize

² Foreign Minister Dr. Surakiart Sathirathai's speech at the Foreign Correspondent Club of Thailand (FCCT), *The Nation*, 20 May, 2003.

or dismiss the significance of the constructive steps and process already taken up. In fact, similar line of thought seems to be implied in Prof. Vitit's concept paper. I simply try to draw attention to it and further elaborate the point for the benefit of making our task concretely meaningful to the people we always refer to. In short, we need to help instill a keen sense of belonging into the society at large.

Human rights, after all, are basically concerned with people as truly stake holders. Not only that, however. They are also closely related to the problem of social transformation. That is why the whole thing must needs be seen as a process. The truth is human rights are not something to come by or bestowed upon as free gifts. Historically, as we learn from the exemplary West itself, they always started out as moral claims by people in particular socio-economic contexts. There followed the struggles with of course either success or failure, depending on the circumstances involved. The same is true with the celebrated civil and political liberties that were achieved in the historical West and gained worldwide acclaims. In a most significant sense, of course, they represent a certain universal value. That is only part of the whole story, nonetheless. For there are bound to be many others forthcoming as human societies keep undergoing changes, as we all are witnessing today. It all means that, as far as human rights are concerned, what is popularly called universal is unfortunately something imposed and therefore tends to become static or even prohibitive.³ Universality of human rights is clearly a dynamic phenomenon and keeps on proliferating, especially with regard to economic, social, and cultural matters, according to the dynamics of social change. Indeed, it is the essence

³ In the classic statement by Jeremy Bentham, founder of Utilitarianism of 19th century England:

*Right ... is the child of law; from real laws come real rights;
from imaginary laws, from laws of nature, fancied and invented
by poets, rhetoricians, and dealers in moral and intellectual poisons,
come imaginary rights, a bastard brood of monsters.*

Cited in "The Politics of Human Rights", *The Economist*, August 18-24, 2001, p.9.

of human and societal values. Unfortunately, they all are being dismissed as out of bound of legitimate human rights in the Western world where the property rights are being cherished above everything else. What Prof. Vitit terms “value-added” makes a lot of sense here, not just for some specific focus points as suggested, but also in broader perspective for the whole task of human rights protection and promotion for the Southeast Asian peoples who have been undergoing enormous changes forced upon them. Now that they have gone through the historical struggles for freedom and self-determination, a new dimension of human rights is naturally bound to arise. All of which brings us to the substantive part of our mission while in the process of the current dialogues and consultations on institutional framework.

All this is of course well in line with what Prof. Vitit suggests in the very last paragraph of his paper, i.e., “Support other activities ...e.g. formation and networking ... More human rights education and capacity building, and the fostering of good practices in implementing human rights standards regionally, nationally and locally, with strong civil society participation and people-to-people cooperation”. The point is that all these things can very well proceed right away, pending the realization of the planned regional mechanism. As a matter of fact, currently quite a few of action and participatory researches have been going on and geared to that effect. Academics and NGOs are increasingly aware of the need to collaborate with one another for the common purpose: people’s empowerment. All this is a promising trend. Only that it still very much remains isolated and lacking of coordinated resources to cope with the problems. So something badly needs to be done about it. That would help lay a sort of infra-structural groundwork for the forthcoming institution. In the process, human rights culture and capability would gradually be developed. The point is that no institution can ever exist in a vacuum, or worse still, just do for its own sake. It certainly is not the case with human rights and dignity at stake that we have been talking about

all along. For, as the Thai NHRC's own experiences can tell, effective human rights protection and promotion depends in the final analysis on the society's capacity to defend itself. And this, I am sure, is true of all the others. Otherwise, human rights institutions, so-called, would end up turning into an exclusive politics of elitism that serves no useful and positive purpose in terms of human progress.

So I would urge this forum, if I may, that this vital part of the concept paper be put on the agenda of action. To get the ball rolling, the national human rights commissions, academic communities, and civil society groups are to be mobilized into networking. Mind you, this is not just for the purpose of facilitating contacts or exchange of ideas and experiences for their own sake, but for real, concrete and relevant action. One would rather not to go into lists of activities involved here. But, to serve as the basis for **human rights capacity building**, a certain common groundwork could very well be looked into here, taking into account the perceived common needs of the Southeast Asian peoples.

First and foremost, promote freedom of thought and expression. This may sound commonplace enough! And of course we can take it for granted for the middle classes and those in the modern sector. But, believe me, it is so vitally important in the context of our Southeast Asia where traditional authoritarianism prevails, especially among poor and marginalized people in both urban and rural areas. More often than not, they have been deprived of appropriate means of livelihood and self-development, as a result of the so-called economic development in which Western-styled industrialization takes the topmost priority. All this is well known and comes to be recognized by the international economic and financial institutions like the World Bank and the IMF. There is so much talk about poverty eradication and sustainable development lately, whatever that means. But that is about all. From the standpoint of establishments, the solution could at best be seen in the manner of welfare, or lately "social safety net" in the World Bank's jargon with holier-than-thou posture. All of which is in defense

of status quo.

In truth, poverty and marginalization is one fundamental problem of deprivation, that is, deprivation of the people's rights to access to resources. P.M. Thaksin Shinawatra of Thailand for once did indeed talk about something like "transforming **rights** into capital", to the delight of listeners like myself. But the phrase somehow is being shifted to "transforming **assets** into capital" in the fashion of modern business ideology in the age of globalization. To take on an optimistic note, nonetheless, the two could be coordinated, thus enlarging the scope for public policy manoeuvre and performance. It significantly means that what is called public policy should not be left to mere one-sided top-down affairs. Meanwhile, it is patently lacking active and positive contribution from the bottom-up. It is symptomatic of under-developed state of the body politic, no matter how much you gain in terms of the growth of GDP. Such is precisely the current state of our peoples in this part of the world, in actual fact the world over as people are perforce to come under development and globalization syndrome. Saying all this need not be anti-development and globalization, as too often falsely claimed. Only that democracy and development must go hand in hand to make human progress. It is certainly not the question of either one or another. And here human rights have a vital contribution to make. So why be so afraid and unnecessarily suspicious of human freedom and progress?

Admittedly, I am somewhat long-winded here. I need to, I am afraid. It is just to make a point to demonstrate how so closely inter-related it is between civil and political rights on one hand, and on the other hand economic, social, and cultural rights. Indeed, it is characteristic of tropical resource-based societies of Southeast Asia, where community way of life together with open access to resources is the norm. We have already learned of the adverse lessons of the enclosure movements in the midst of Industrial Revolution in eighteenth century England. Similar things are happening in our tropical resource-based Southeast Asia. Hence

marginalization and deprivation among local communities and peoples. Unfortunately, this is not sufficiently understood, among academics and even human rights defenders alike. For we tend to follow the norms and standards that have already been set from afar as if ready-made formula. That is not so in real life, I am afraid. As already mentioned, human rights start out as moral claims of particular groups of people in particular historical contexts. This is the crux of the whole matter. Freedom of thought and expression is not just for the sake of exercising the rights according to the set standards, but essentially to articulate newly-created moral claims that might even contradict the existing ones. It would open up the new dimensions of human rights in the world of rapid and radical change. What recently emerges as community rights is the notable case in point. It has now come to be recognized in the current Thai Constitution, for example, as a result of the effective and sustainable practices of community forestry in a good number of cases around the country.⁴ Naturally, it met, and still does, with stiff obstruction both from within the government bureaucracy, good old-time academics, and vested business interests. And right now a draft organic law on community forestry still gets suspended in the Parliament. At the global level, a UN Draft Declaration on the Rights of Indigenous Peoples (DDRIP) has now been completed and come up for review and endorsement.⁵ Of course, legal recognition, national or international declaration, convention, etc., are just the beginning and still have a long way to go, as far as human rights protection and

⁴ Constitution of Thailand B.E. 2540 (1997):

Article 46: "Persons so assembling as to be a traditional community shall have the right to conserve or restore their customs, local knowledge, arts or good culture of their community and of the nation and participate in the management, maintenance, preservation and utilization of natural resources and the environment in a balanced and sustainable fashion, as provided by law."

⁵ Darrell A. Posey, *Traditional Resource Rights: International Instruments for Protection and Compensation for Indigenous Peoples and Local Communities*, IUCN - The World Conservation Union, 1996, p. 28.

promotion is concerned. But they objectively reflect the people's aspirations and claims that need be seriously taken into account in society and international community.

All this community talk is in obvious contradiction with the traditional individualism of the historical West, where it is strictly in individual capacity that counts as legitimate human rights. But then that tradition is of itself in contradiction with reality of life right from its inception. That is, reality of social life and co-existence with freedom, justice and peace. After all, human rights and dignity are not something incidental, but inherent in human nature itself. That is to say, people just cannot be expected to tolerate oppression and exploitation forever, but may oppose and fight to get their legitimate rights and place in society. And community is an integral part of human livelihood and identity no matter in what form: family, group, association, locality, nation, and what not. It is even more so in the case of resource-based communities and networks which are characteristic in our Southeast Asia. That is why the power- that- be must needs learn how to accommodate moral claims and demands for change. It does not at all mean that individualism as the milestone of human rights is without its validity. But it is just one side of the coin, and, more often than not, puts creative social life and relationships in jeopardy, as we are all witnessing today.

Looking ahead

What I have said all along is certainly not entirely my own creation. In fact, if you may recall, it principally follows the spirit of what my Thai colleagues and myself have learned as a new comer from both the 2nd workshop in Manila and the Strasbourg meeting last year. This 3rd Workshop, I am happy to say, seems to reassure me of what I grasp from the previous dialogues. I am deeply thankful for all the valuable contributions in this forum. In this concluding presentation, I simply try to recollect and elaborate more from our Thai experiences and lessons. The major part of

which is not far apart from those of our Southeast Asian neighbours. Hopefully, again, it could help clarify our position in response to Tan Sri Dato Harun has just raised the doubt as to “who we are and in what direction to go”.

To begin with, on the point of unity in diversity, repeatedly cited in Prof. Vitit’s presentation. So, to the phrase “human rights variations” as raised by our Working Group’s Co-Chairperson, Mr. Marzuki Darusman, as well as Dr. Hafid Abbas’s concern about the region’s vast diversifying elements, I would beg to draw your attention to our common ground in both geographical and historical terms. One does not have to elaborate on this point of reality among knowledgeable friends here. All this clearly constitutes quite a natural basis upon which unity, and for that matter cooperation and even regional institution, whatever to be called, could be created. Too often, we keep referring to “political will”. That is just the jargon of the old-fashioned kind of elitist politics. Of course, it still counts a great deal. But then shall we allow the dialogues of human rights and dignity to go down into the state of stagnation just for reason of outdated conservatism? Or worse still, with what is lately emerging in the form of neo-conservatives’ conspiracy bent on the unilateral and preemptive politico-military solution to the 9/11 incident and perceived terrorism.⁶ On our part as human defenders and promoters, be that as it may, shall we think of human rights merely as something antagonistic to the power-that-be? I strongly believe that, with positive thinking, we can do a lot of service not only to the people we naturally have in mind, but significantly also to contribute to the governments themselves in

⁶ Joshua Muravchik, “The neoconservatives unmasked”, *International Herald Tribune*, May 7, 2003, p. 8. R. C. Longworth, “Pushing democracy down world’s throat”, *Bangkok Post*, April 28, 2003, p. 7. Bill Clinton, “Agree with us or go to hell, that’s not the way...”, *Agence France- Presse*, as reproduced in *The Nation*, April 17, 2003, p.14A. Paul Krugman, “Presidential credibility: the rest of the world does not trust Bush”, *International Herald Tribune*, February, 26, 2003, p. 8.

the most crucial task of conflict management and social transformation in an orderly manner. True human rights look to social order and security. What is really in need is the human vision and mutual understanding. And that would greatly save our own societies from unnecessary chaos and enormous losses. As I have pointed out, we all share a good deal of common ground that also includes both physically in terms of resource base of bio-diversity, and culturally with regard to local traditional knowledge and community way of life that makes sustainable development possible and feasible. In short, we are having a sort of comparative advantage, to use the economist's jargon, as the basis upon which to work on the creativity of human rights and dignity. So you can see, this is well in line with what Marzuki Darusman raises the point about making the process of institution building - ASEAN Human Rights Mechanism - "more relevant to the grassroots peoples and communities, so that they can enjoy the full range of human rights and dignity". This is certainly not an empty ideal. But then it bears upon all of us to work it out in the process of our dialogue and related action.

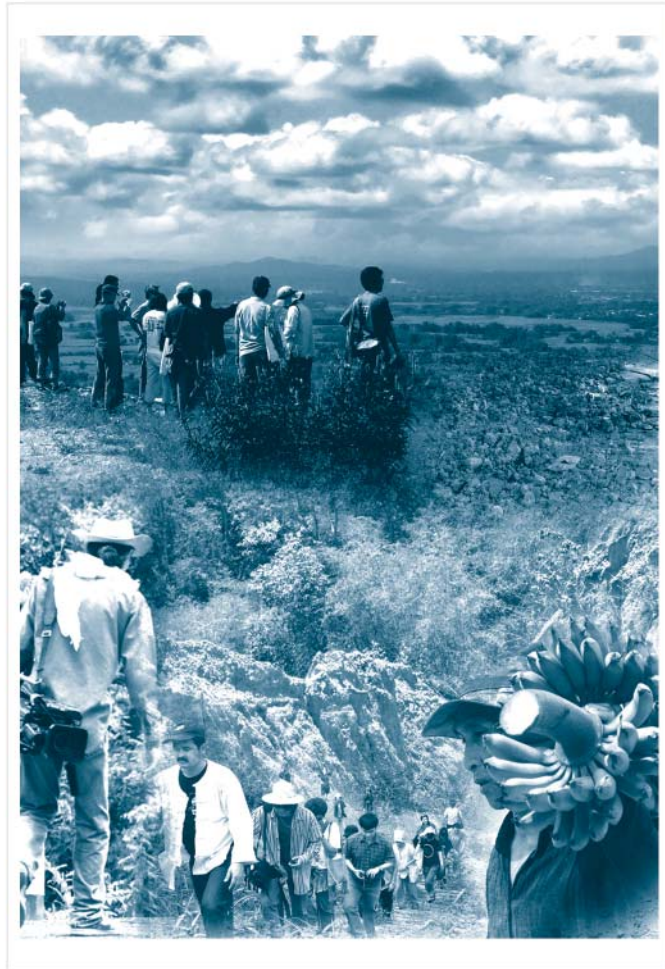
Of course, we all share the concern of the current dilemma the whole world is facing. That is to say, the global impact of the 9/11 and the war on terrorism. On top of our immediate concern with the increasingly precarious state of human rights, this inevitably brings us to further issue in regard to the working status and future of the United Nations, the cornerstone of international human rights standards ever since after the World War II holocaust. There is little we can do about it. It may not be direct concern on our part, of course. But if we can possibly ever think of doing something at all, I should like, if I may, to add a little short note here. One just cannot help it, in view of the worldwide importance of the UN in the field of human and social development. To my mind, it should somehow stop dealing with the issue of war and peace that is by nature far beyond its control. It is next to impossible in the face of the newly-emerged doctrine of military unilateralism. It should

instead concentrate on the task of creative development to promote people's capacity building that we have been concerned with all along. To be able to fulfill the mission, the UN also needs to find ways and means to undergo democratic reforms. Could we contribute something to this effect, at least in ideas if not in action, as citizens of the UN's member states? Indeed, at this most critical moment in history, the world is really in bad and urgent need of constructive ideas and public opinion vis-à-vis a new form of arbitrariness and totalitarianism. For under such a fluid and ambivalent state of affairs, there is hardly, if at all, a place for human rights and dignity. And for that matter, for all of us gathering here.

One more word of reminder about Prof. Vitit's concept paper. Whatever strengths and weaknesses, at the very least it manages to lay a groundwork for positive line of thinking and action above and beyond the negative politics of human rights that, more often than not, stands in the way of creative thinking and forward-looking dialogues. I hope you agree with me that this is the key to making our progress possible in the long run. I for one do not believe it is beyond the capacity of the intellectual forum such as this one to cope with the task at hand.

Finally, after all the fruitful and tireless dialogues in this 3rd Workshop, and on behalf of the Thai NHRC, I wish to express our sincere thanks to our two co-hosts: the Ministry of Foreign Affairs and the Regional Working Group on an ASEAN Human Rights Mechanism. It is indeed a privilege for us, the NHRC of Thailand, to be part of the mission. I also wish to extend our gratitude to all invited speakers and resource persons, especially Prof. Vitit Muntabhorn for his most valuable contributions, and the very hard-working Secretariat Team for making this Workshop possible amidst many uncertainties. Last but not least, I wish to thank all of you, distinguished participants, for your great spirit of co-operation.

Now I wish to declare the Workshop close.





Asian Positive Regionalism*

Saneh Chamarik
Chairperson,
National Human Rights
Commission of Thailand

We have gone through the two-day deliberations on one most crucial problem of our time, i.e. Natural Resource Management and Cooperation Mechanism in the Mekong Region. A fairly wide range of topics have been touched upon, starting from the issue of development in general to those concerning energy development and the rights and liberties of the grass-root people and communities. As well comes along the immediate problems arising from the controversial Upper Mekong Navigation Improvement Project (UMNP), providing for a comprehensive dredging and blasting of the hindering rapids and shoals along the way. It is indeed this shared sense of concern and urgency that prompted our gathering here.

As we all know, this UMNP was initiated by China, and soon after agreed upon by the three participating nations: Myanmar, Lao PDR, and Thailand. The whole rationale for China is to serve as a means to improve the capability of commercial vessels to navigate from Yunnan Province into Laos and Southeast Asia along the Lancang and Mekong Rivers. As for the other three junior parties, it is looked upon as a great opportunity to benefit from potential economic growth in neighbouring

* Opening Address, 18th November 2004, International Conference on Natural Resource Management and Cooperation Mechanism in the Mekong Region, 16th-18th November 2004, United Nations Conference Centre, Bangkok, Thailand

China through increased trade – so-called “free trade” for that matter. That is to say, “to catch the express train” in the current Thai jargon.

Now that it is time for presentation of the outcomes of the previous two-day seminar, I beg all of us, if I may, to pause for a moment to do some hard rethinking about the whole matter. For, in spite of the specific focus on the Mekong river basin involving such problematics like the inter-state relations and the equitable and sustainable use of natural resources, as pointed out in the seminar programme, the real issue and challenge goes far beyond that. It is not just the matter of specific cases or circumstances, but involves the whole spectrum of human world view and understanding. In other words, the Mekong river basin issue and solution just could not possibly serve as an end unto itself. In view of current globalization and along with it, regionalization, it inevitably forms part of global perspective and challenge. It is indeed the fundamental question of what kind of regional order is desirable appropriate for Asia to develop and progress with freedom, justice, and peace vis-à-vis the Hobbesian-styled politics of domination that has been going on for so long under the impact of century-old globalization and self-aggrandizement. Asia, including China as dominant power, certainly can no longer afford that kind of contradictions and divisiveness from within imposed upon itself.

The point is that this dialogue on the Mekong region should not confine itself to mere specifics and technicalities where one more often than not gets lost with no effective and long-term solution in sight. Let me just elaborate a little further.

The fact is that China and Southeast Asian nations have come a long, long way since after collapse of the Soviet empire and end of the cold war in early 1990s. All are practically free and independent from the heavy burden of polarization and ideological and armed rivalry and confrontation. This is not just for the absence of big power play of some twenty years ago. It is basically the built-in quality inherent

in the indigenous aspirations, resourcefulness and resilience as demonstrated in their life-time and persistent struggles. On my then optimistic note, it is the fundamental question of how these potential qualities can be mobilized to bring about cohesiveness and solidarity. Mind you, this is not only to serve as countervailing force thereby warding off the politics of domination from outside, both politically and economically, but also to create a new and positive sense of regionalism.** Along this line of perception and thinking, then, the existing inter-state relationships could be transformed into the bridge for mutual understanding and co-existence, instead of mutual insecurity and rivalry.

All this clearly has great relevance to what is being attempted at this dialogue on the Mekong region. The way one sees it, it could very well serve as starting point for furthering the cause for Asia as whole, somewhere along the line of European Union development. It is all the more significant and necessary in the case of Asia as tropical resource-rich region. So first and foremost, an objective knowledge and understanding of our natural resource base needs to be sufficiently grasped. The Mekong river basin, for instance, must needs be seen as forming part of the whole tropical resource base of Asia, not for its own sake. All are inherently inter-related. Any adverse repercussions on one part are bound to affect the rest. The implication here is that it is far from enough to see into the Mekong issue as a mere problem of specific inter-state relations and equitable use of resources. It is the question of resource-base integrity as a whole that really matters. And this tells a lot of things about the so-called assessment of social and environmental impacts, which more often than not tends to serve economic growth.

This brings us to another problematic concerning the idea of economic growth. It is historically an ideology of self-aggrandizement

**Saneh Chamarik, "Towards Positive Regionalism in Southeast Asia", paper delivered at the conference on Peace and Transformation in the Asia-Pacific Region, Yokohama, Kanagawa, Japan, 26-29 March, 1984.

and domination both within and without, and still remains very much so. Unfortunately, most if not all Asian nations, willy-nilly, subject themselves to it, despite their declared freedom and independence after long years of struggles and hardships. The point here is that the hoped-for positive regionalism promoting mutual trust and co-existence can hardly, if at all, be brought about under the aegis of growth ideology. This is not to go against growth per se. It is growth for its own sake and for domination that must needs be done away with. Here, the issue of common people's rights and liberties comes into the picture. Mind you, again, it is to be not just so-called participatory rights handed down from above. It is inherent in the right to livelihood and self-reliance as well as self-development. How this aspect of basic human rights is to be translated into practice in matter of natural resource management, is something that earnestly needs close attention in this particular forum.

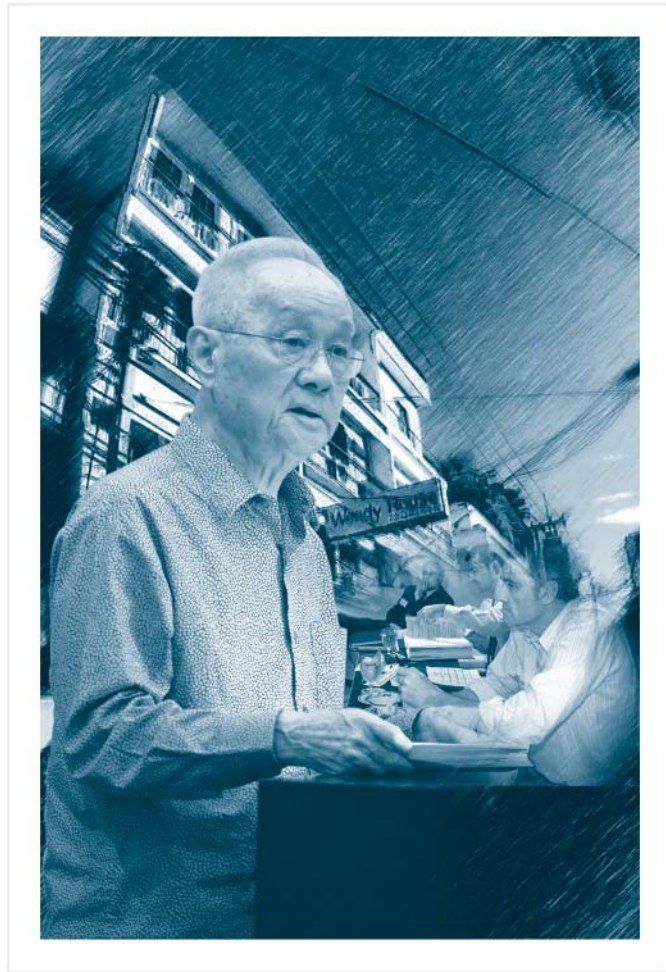
Last, but not least, is the question of national sovereignty that significantly stands in the path towards positive regionalism as here suggested. The principle and practice of national sovereignty is now some three centuries old. It did serve its purpose as international institution in establishing peace and security against widespread anarchy in Europe. And this then was extended to all other parts of the world in the course of colonial expansion. No doubt it has been a great help in the course of nation building and security in the past century. That is to be seen as part of historical process of human and social development. But then along the line, state security with its inherent absolutism turns against human rights and security. This is of course one most delicate and sensitive point to be carefully worked out. At any rate, one thing is clear: that is, the absolutism of national sovereignty needs to be closely scrutinized so that political reform could appropriately be carried out, especially in the sphere of human rights and liberties as well as the right to livelihood and self-development of the grass-root people and communities. It should not be difficult to see that this line of thought and action would have a very

significant bearing on the specific problem of natural resource management under discussion.

Finally, my apology for a somewhat long-winded opening address. The main purpose is to collectively find ways and means towards meaningful and effective solution. The ultimate answer lies in the alternative regional order that could accommodate the integrity and sustainable management of Asia's tropical resource base. Then as prerequisites, the inter-related issues of growth and sovereignty needs to be thoroughly looked into, so that an appropriate and just solution could be found, at least in terms of political and institutional reforms with a view to alternative and positive regional order in Asia.

November 18, 2004







Community Rights in Global Perspective*

-**Saneh Chamarik**-

Introduction

Let me first of all express my deep gratitude for the honour of addressing this highly important III MMSEA conference. It is indeed a rare opportunity for myself to learn and be associated with the distinguished participants here who are in the know, actually a great deal more so than I. In this regard, may I also convey my everlasting thanks to all the Thai friends and colleagues as well as Dr. David Thomas for their kind support and collaboration in bringing me up into this realm of creative down-to-earth learning. That was a most refreshing experience, still vivid in my mind with a kind of intellectual uplifting for me as student of politics. I am glad they also take an active part in this forum right from the beginning with Chiangmai conferences some seven years ago. One only hopes all these persistent and continuing efforts will eventually bear fruits in fulfilling the common people's aspiration to be free to live their own lives with dignity.

Looking over the scheduled agendas, it is obvious that practically everything is well taken care of. On my part and with all due respect, I only wish in my small way to add something to enlarge the scope of our thought. It is not about the body of knowledge and expertise as such which I shall have nothing to contribute to, but concerning the ways and means of social learning on the local people's part. I am sure this is the

* Keynote delivered at the III MMSEA (Montane Mainland Southeast Asia) Conference, Yunnan, 25 - 28 August 2002.

true and ultimate purpose of the whole dialogue, which we could not afford to lose sight of. This point just cannot be overemphasized. In view of the current trends of global disorder and transnational threat to biological resources and indigenous knowledge, the time has now come for a real and urgent need for the common people's direct action in order to protect their own legitimate rights and liberties, and thereby rectifying the existing imbalances in political and economic relationships. It is the question of how social learning and action could possibly be made to proceed in constructive and peaceful manner, with a view to setting out the path towards a new social order based on freedom and justice at all levels of human society. Presumably this is going to be a very hard and long, long process that requires a high degree of tolerance, perseverance, and wisdom. Nevertheless, it is the nature of things and common challenge we all should have in mind.

Meanwhile, there is the other side of the coin, too. As one western writer pertinently voices the call for an alternative global economic order that is geared to the real needs of people and the Earth, and which "must accept that the era of 'the wealth of nations' is past, and treat the 21st century as a multi-level one-world economy."¹ The rationale is none other than the neo-liberalism's own built-in indulgence in over-production and over-consumption for the sake of profit maximization, ostensibly dubbed economic growth. This line of rethinking and articulating is getting more and more hearings all over, East and West, as the time goes by. That, mind you, should not too naively and conveniently be construed as consolation and reason for rejoice. It is essentially to serve as an objective understanding of the dynamics of life, and then to get prepared and be ready for constructive changes. This is going to be quite an enormous task for the oppressed and the oppressors alike.

¹ James Robertson, *Future Wealth: A New Economics for the 21st Century*, London, Cassell Publishers Limited, 1990, p. ix.

Creating a sense of regional identity

That is why, in addressing ourselves to the concern for indigenous knowledge and bio-diversity, it is vitally important for all of us, to begin with, to take a fairly long range view of the whole matter. That is to say, a certain perspective beyond the immediate needs of making a living and day-to-day resource management. If I am not mistaken, at least from our own empirical research evidence, we have quite a good number of exemplary cases of ethnic and rural communities with well established traditional practices for sustainable livelihoods and resource management. And of course we can take the relevant individual cases for appropriate application elsewhere, as we have been doing nowadays. But that is actually only part of the whole story. The real and long-term problem is how a sense of commonality, inter-relatedness and solidarity could be instilled into the people's mind, and where to start. In fact, if one may say so, the very title of this conference already suggests itself: Montane Mainland Southeast Asia. Here is the key to further understanding of what we have been trying to do and to achieve - the holistic dimension of Southeast Asia as tropical resource base and its integrity. That is to say, not just pieces of bio-diversity and indigenous knowledge in isolation from one another.

As we all know, Southeast Asia constitutes both as the strategic sea route from the middle east to the Pacific coast, and as one among the world's most tropical resource-rich regions. As such, it has always been subject to the Western powers' rivalry and domination ever since after the Industrial Revolution and imperialism that followed. The achievement of national independence and so-called self-determination after the World War II does not help much in actuality. It only brings about forces that accelerate and intensify divisiveness and resource exploitation even further in the course of nation building, modernization and then misdirected development. All along, Southeast Asia's precious biological resources, indigenous knowledge, and thus local communities, constantly fall prey

to all sorts of exploitations, abuses, and marginalization, as we all are witnessing today. And right now with the economic globalization and biotechnological advancement intensifying during the past two decades, genetic resources become the main target for gaining the decisive power over the world economy under the mere motive force for profit maximization and economic growth. All this is the obvious threat to the earth's fragile ecosystems, and for that matter, to the people living in them. In short, the threat to the people's basic right to life.

Under the circumstances, then, the issues of bio-diversity and indigenous knowledge needs somehow to be conceived of in perspective of a regional whole, not just so routinely in parts: i.e., in qualitatively holistic rather than quantitatively reductionist terms. Implicit in all this is a keen sense of geographical unity as well as a kind of people-to-people inter-relatedness. Nowadays there are so much talks about and action programmes for strengthening and empowering the local people and communities. But without a sufficient awareness of and positive steps taken towards the goal of commonality and solidarity, all these talks and efforts will come to naught, however earnest and enthusiastic they might be. And exactly this is one most difficult part of the whole task, as far as the speaker's own experience can tell. Nonetheless, it is absolutely a prerequisite that must come before all else. For this very reason, three shared and interrelated perceptions are to be taken note of here for the benefit of further dialogue.

- (i) Bio-diversity to be understood and acted upon as constituting one unifying tropical resource base, and thus commonality and consolidation transcending the existing inter/ intra-national boundaries and divisions among local communities;
- (ii) Inter-relatedness between the mountain, lowland, and maritime areas and peoples to form one unifying network of resource-based local communities collectively marginalized in the face of the common threat of globalization and alienated

elitism; and,

- (iii) Collective recognition of the real need for self-reform on the basis of self-reliance and the right to development, so that the endogenous sources of knowledge and creativity could be revitalized and developed as the basis upon which modern knowledge could also be effectively and appropriately adapted and assimilated.²

All these, to be sure, come more or less within the purview of this conference. Only that it is so vitally important as to deserve to be emphasized and put into a coherent policy and strategic plan of common action. As a matter of fact, initiatives have already been taken on the part of local peoples and communities themselves the world over. So much so that there have now been emerging the new concept of collective rights based on the community ways of life, and naturally in a great variety of forms and practices. This current trend of cultural pluralism is admittedly the new phenomenon in the Western self-proclaimed style of universal, individualistic and mono-cultural sphere of influence in the field of human rights. It is inevitably bound to meet with powerful resistance and opposition, or destruction if possible. Since it obviously not only poses a spiritual and intellectual challenge, but also stands in the way to the ultimate goal of domination and hegemony inherent in the Western civilization ever since after the Scientific and Industrial Revolutions centuries ago. This is indeed the real “clash of civilizations”, to borrow Samuel Huntington’s notorious phrase, though in entirely different context of Globalization vs. Re-localization. Or, in the more familiar political economy jargons, Global Totalitarianism vs. Grassroots Emancipation and Democracy. This trend of cultural confrontation is most likely to be characteristic of and long lasting into the 21st century. So let us try to

² Saneh Chamarik, “Technological Self-Reliance and Cultural Freedom”, in C.G. Weeramantry, ed., *Human Rights and Scientific and Technological Development*, Tokyo, United Nations University Press, 1990, p. 56.

explore and assess the potential forces of both the pros and cons, so that ways and means could be found to collectively set our global society on the path towards real freedom, justice, stability, and peace.

A Certain Progressive and Democratic Global Framework

All the above considerations take the whole subject matter under discussion into the world of politics of human rights. It is therefore deemed appropriate to look into how it is worked out in real life. For this purpose, two preliminary interrelated points are suggested here. The one is concerned with the nature and reality of human rights itself; the other with the creation of progressive and democratic international human rights instruments on the part of the United Nations.

First, human rights are certainly not something to come by as gifts. They are, from Tony Evans' historical observation, "concerned with establishing and maintaining the moral claims that legitimate particular interests", or in Neil Stammers' more precise explanation, "ideas and practices concerning human rights are created by people (sic) in particular historical, social, and economic circumstances"³ To put it strictly on empirical ground, they are the straightforward result of struggles, and hardly characteristic of any specific culture or tradition. Perhaps, Heiner Bielefeld's analysis can very well help clarify the issue here:

... Human rights did not develop as a "natural unfolding" of humanitarian ideas deeply rooted in the cultural and religious traditions of Europe. On the contrary, people in the West, too, had (and still have) to fight to have their rights respected. ...These rights ... are achievements brought about in long-lasting political conflicts during the process of modernization in Europe.

³ Tony Evans, "Introduction: power, hegemony and the universalization of human rights", in Tony Evans, ed., *Human Rights Fifty Years On*, Manchester University Press, 1998, p. 4.

*They are by no means the eternal heritage of an original cultural endowment of Europe.*⁴

On this account, all the ambivalence should now be put to rest as to the current controversy about both cultural essentialism and relativism. The one, Western claiming monopoly of the definition on human rights; while another, non-Western denying the fundamental universality of human rights, i.e., human life and dignity. The two, thus far, can only indulge in self-styled polemics and actually get us nowhere in terms of human progress, to be here defined as freedom from domination according to W.F. Wertheim's Emancipation Principle.⁵ As a matter of fact, both human freedom and human progress simply constitute two sides of the same coin. One cannot do without the other. The inclusive "four freedoms" - freedom of expression, religious freedom, freedom from want, freedom from fear - that Franklin D. Roosevelt advocated towards the end of World War II underlying the vision of peace, security and human rights, are basically along the same line of thinking. As we all well remember, it is this global vision that brought about the establishment of the United Nations and subsequently the Universal Declaration of Human Rights. From then on, the world body takes upon itself the major task of gradually and persistently expanding and broadening the scope of human rights even further. And it is still going on fairly consistently, in spite of its inherent weaknesses and limitations, both legal and operational, as international organization. But at the very least, it can afford to provide a certain legitimate democratic groundwork for the rights holders, the people, to work their way out with a moral support of global public opinion. Fortunately enough, the subject matter of bio-diversity and indigenous

⁴ Heiner Bielefeld, "WESTERN VERSUS ISLAMIC HUMAN RIGHTS CONCEPTION? A Critique of Cultural Essentialism in the Discussion of Human Rights", *Political Theory*, vol. 28, No. 1, February 2000, pp. 96-97.

⁵ W.F. Wertheim, *Evolution and Revolution: The Rising Wave of Emancipation*, Middlesex: Penguin Books, 1974, p. 47.

knowledge, our main concern here, also falls within the purview in such global democratic perspective. It is worthwhile then to briefly inquire into how well it fares under the auspices of the United Nations, so as to get the idea as to what more needs to be done and how.

This leads us to the second point: that is, the question of international law and order and that of human freedom and progress. For the purpose, I shall gratefully draw on part of one IUCN-commissioned study under the rubric: Traditional Resource Rights: International Instruments for Protection and Compensation for Indigenous Peoples and Local Communities.⁶ This is just to give a rough outline of what is in stock with regard to the existing state of international human rights instruments, both legally binding and not legally binding. Those legally binding consist of four main agreements: UN International Covenant on Civil and Political Rights (ICCPR) 1976, UN International Covenant on Economic, Social and Cultural Rights (ICESCR) 1976, International Labour Organization Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries (ILO169) 1989, and Convention on Biological Diversity (CBD) 1992. For those with non-legal binding, three deserve to be referred to here as guidelines for further action: UN Draft Declaration on the Rights of Indigenous Peoples (DDRIP) 1994, UN Draft Declaration of Principles on Human Rights and the Environment (DDHRE) 1994, and the Leipzig Declaration on Farmers' Rights. From these somewhat scattered provisions, a number of relevant points could be drawn with regard to the traditional resource rights of indigenous peoples, as follows.

- (i) Self-determination and development;
- (ii) Disposal of natural wealth and resources;
- (iii) Protection of minority culture;
- (iv) Religious freedom;

⁶ Darrell A. Posey, *Traditional Resource Rights: International Instruments for Protection and Compensation for Indigenous Peoples and Local Communities*, IUCN - The World Conservation Union, 1996, particularly Chapters 1-5.

- (v) Environment integrity;
- (vi) Intellectual property rights;
- (vii) Recognition of customary law and practice;
- (viii) Farmers' Rights.

The two, (i) and (ii), in particular are technically ambivalent regarding the question of jurisdiction. While the CBD confirms the sovereign rights of States over indigenous peoples' lands, territories, and natural resources, both the ICESCR and ICCPR stress the rights of all "peoples" in plural number to self-determination and to freely dispose of their natural wealth and resources. So under the circumstances, indigenous peoples are concerned, quite justifiably, that such sovereign rights might just as well be extended and encroaching upon their traditional knowledge, innovations, and practices. On the other hand, the view in favour of minorities is opposed by national governments for fear of the national integrity and their own sovereign rights being eroded thereby. All in all, then, as far as the international agreements with legal binding are concerned and under the existing structure of power relationships, there is bound to be a gap and insoluble contradictions. In this perspective, it makes sense for a new initiative being taken from within the United Nations in a long process of consultation with indigenous leaders, and that resulted in the DDRIP with a fairly comprehensive framework to work with. Though not legally binding, it is meant to serve as the standard international document and thus the basis for any further discussions and negotiations concerning indigenous peoples that are to follow suit. Its principal features of indigenous peoples' rights are well summarized in the above-mentioned IUCN study, and therefore to be cited in full here for the benefit of fellow participants as well as community leaders in general.⁷

⁷ Ibid. p. 28.

- (i) Right to self-determination, representation, and full participation;
- (ii) Recognition of existing treaty arrangements with indigenous peoples;
- (iii) Right to determine own citizenry and obligations of citizenship;
- (iv) Right to collective, as well as individual, human rights;
- (v) Right to live in freedom, peace, and security without military intervention or involvement;
- (vi) Right to religious freedom and protection of sacred sites and objects, including ecosystem, plants, and animals;
- (vii) Right to restitution and redress for cultural, intellectual, religious or spiritual property that is taken or used without authorization;
- (viii) Right to free and prior informed consent;
- (ix) Right to control access and exert ownership over plants, animals and minerals vital to their cultures;
- (x) Right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal areas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used;
- (xi) Right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral tradition, literature, designs and visual and performing arts;
- (xii) Right to just and fair compensation for any such activities that have adverse environmental, economic, social, cultural or spiritual impact.

Legally binding or not, the effectiveness of all these numerated rights - i.e. moral claims - depends in the last analysis on the strength of their being recognized and respected as legitimate in society. Thailand

is a good example. In spite of currently constitutional provisions for community rights with regard to indigenous knowledge and bio-diversity, the very issues under discussion in this forum, all these moral claims are still far from being realized in practice. This is because a mere legal or moral formula cannot just exist on its own without social and cultural backup. This is certainly not a matter of disappointment or outright despair. That would unfortunately be too light-hearted and superficial. It all is the nature of things, that is, the beginning of a social process just like any strenuous process of struggles for freedom in human history. The crucial difference is that indigenous peoples and rural communities nowadays do not just stand alone in all this. A meaningful and substantive beginning has already been made with at least a sector of world public opinions and people's movements behind it, even though still very much in face to face with the power that be.

Retrogressive and authoritarian global politics of human rights

There are two major and interrelated factors that stand in the way of development towards human freedom and progress: one conventional and another a new market totalitarianism. The first has something to do with the good old definition of human rights itself. It is of course the historical West that did inspire the whole world with the modern ideas of human rights and dignity. And yet it only falls back on and confines itself to those created in "particular historical, social, and economic circumstances" of the seventeenth and eighteenth centuries. That is why the meaning and scope of human rights is narrowly defined as those strictly concerned with individual liberties, property rights, and the rule of law. In short, just those with judiciable qualifications. In Jeremy Bentham's classic polemic against the French Revolution's Declaration of the Rights of Man and of the Citizens expounding the natural and inalienable rights of all people:

“Right...is the child of law; from real laws come real rights; from imaginary laws, from laws of nature, fancied and invented by poets, rhetoricians, and dealers in moral and intellectual poisons, come imaginary rights, a bastard brood of monsters”⁸

That is also why the collective economic and social rights are seen in the West as out of bound of the human rights standards, and just as a matter of specific concerns for humanitarians and philanthropists, as well as social welfare. And all this, despite the UN long-established principle of the indivisibility and interdependence of the civil and political rights, and the economic, social and cultural rights. The reason is not hard to find, and for a very good historical reason too. After all, the real motivating forces behind all the past liberal revolutions were none other than the commercial and middle classes, the haves. And to these days, all the cherished value and tradition of liberalism are still energetically sustained by exactly the same forces, with instinctive and adverse attitudes towards both the state and the have-nots. It is the latter adversary that still remains the main and exclusive target, now that the liberals have come to assume the power of the state itself. In this context, it is of no surprise as to why it is only and purely the civil and political liberties that count as the standard measure of human rights. All of which should have nothing to do with the mere “imaginary” collective economic, social and cultural rights.

In such a state of affairs, Western liberalism turns itself into the sharp divide between the haves and the have-nots, the rich and the poor, the ruling and the ruled, domination and freedom. Whatever angle one looks at, they amount to practically the same predicaments. Following the Industrial Revolution, the politics of the haves – Western styled property rights – fast developed into a three-pronged cult of industrial capitalism

⁸ Cited in The Economist, “The Politics of Human Rights”, August 18th-24th 2001, p. 9.

See also, Onuma Yasuaki, “The Need for an Intercivilizational Approach to Evaluating Human Rights”, and Chris Jochnick, “Human Rights for the Next Century”, Human Rights Dialogue, Volume 10, September, 1997, pp. 4-7.

dealing with human, nature, and market. All of which, under the guise of economic science with the celebrated Adam Smith as progenitor. From then on, the economic system is to take precedence over society. And that, in the distinguished economic historian Karl Polanyi's words, "means no less than the running of society as an adjunct to the market. Instead of economy being embedded in social relations, social relations are embedded in the economic system".⁹ In this scheme of thought, then, human beings are to be valued and treated as mere units of labour, and nature as raw materials. And both, the natural and human substance of society, are to be transformed into material commodities, and therefore to be subject to the market mechanism which is steadfastly held to be self-regulating beyond social control. This is how the market economy historically came about in commercial-made society, and hence the creed of free trade and free market.¹⁰ All of which, solely and infinitely for the sake of industrial progress and capital accumulation.

Against such an extremist ideological background, colonization and appropriation of nature proceeds in full force ever since. Here we can see how the Western tenet of rights and liberties comes into play, that is, within the framework of individualism, property rights and the rule of law. Of all this, the determining factor lies with property rights which, according to John Locke's three-century old theory of value, are created by extracting resources from nature with one's labour. That is how capital comes into being and as a result, as Vandana Shiva succinctly puts it,

“...only capital can add value to appropriated nature, and hence only those who own the capital have the natural rights to own natural resources; a right that supersedes the common rights of others with prior claims. Capital is thus defined as a source of

⁹ Karl Polanyi, *The Great Transformation: the political and economic origins of our time*, Boston, Beacon Press, 1957, p. 57.

¹⁰ *Ibid.*, p. 42-42, 132, 135-140.

freedom, but this freedom is based on the denial of freedom to the land, forests, rivers and bio-diversity that capital claims as its own.”¹¹

And all this is emphatically and nonchalantly defined as a matter of economic freedom and the interplay of market forces in the industrial West! Vandana Shiva, again, so appropriately brands this as the process of theft and robbery. It is not only the people’s freedom and collective rights that are endangered and lost. But most importantly it is the human right to life itself that is subject to constant threat and destruction, as everyone knows full well how all these commons are valuable and indispensable as the life support and sustenance base of local people and communities. So along the process of appropriation and privatization of the commons, the indigenous peoples and rural communities’ rights and livelihoods become thereby marginalized and impoverished, as we are all witnessing today. But then, again, that is of no serious concern, especially now that a remedy has been found by way of the so-called “social safety net” as defined by the World Bank, whereby all the expected troubles and threats to the status quo can be contained. Needless to say, this kind of pejorative idea and measure is well shared by many a distinguished economist and academe alike.

Nor is that all. The colonization of nature is now reaching its new height with the all-powerful capital extending from manipulation to monopoly of life itself, through biotechnological capabilities and the accompanied intellectual property rights regime. This in itself explains the actual state of science and technology in the contemporary world. It is all practically corporate-oriented and under the same old paradigm of industrialism, something to beware of for the common people who struggle for freedom. As Andrew Kimbrell very well describes:

Biotechnology extends humanity’s reach over the forces of nature as no technology in history has ever done. Bioengineers are now manipulating life forms in much the same way as the engineers

¹¹ Vandana Shiva, “The Enclosure of the Commons”, Third World Resurgence, Issue No 84, 1997, p. 6.

of the Industrial Revolution were able to separate, collect, utilize, and exploit inanimate materials. Just as previous generations manipulated plastics and metals into the machines and products of the Industrial age, we are now manipulating and indeed transferring living materials into the new commodities of the global age of biotechnology.

... ..

The raw material for this new enterprise is genetic resources. Just as the powers of the Industrial age colonized the world in search of minerals and fossil fuels, the biocolonizers are now in search of new biological materials that can be transformed into profitable products through genetic engineering.¹²

In the recent past, bio-technological development has been well known and taken for granted in the areas of disease-causing bacteria for the benefit of mankind. Life forms, i.e., products of nature themselves, are presumed under the traditional legal doctrine to be non-patentable. All this, however, has been radically changed by the US Supreme Court's decision in 1980 to the contrary that life is indeed patentable. The brand new policy is thereby unilaterally created, opening the way for the US transnational corporations, with all the capital, technology and market well under control, to acquire the patenting of indigenous plants and animals, and hence knowledge. Since then, a good number of patents have been issued on cases like the neem tree and Basmati rice of India, Jasmine rice and medicinal plants of Thailand, and still many others to follow. All these incidents are already well known and so blatantly arbitrary. On top of that, there is also now the planned global patent regime under negotiation in the World Trade Organization, known as Trade Related Intellectual Property (TRIPS),

¹² Andrew Kimbrell, "Biocolonization: The Patenting of Life and the Global Market in Body Parts", in Jerry Mander and Edward Goldsmith, ed., *The Case against the Global Economy and for a Return toward the Local*, San Francisco, Sierra Club Books, 1996, pp.131-132.

to be imposed on the Third World countries.¹³ If getting through, it is not only bio-diversity and indigenous knowledge that is in grave danger of extinction, but also a total and absolute control on the whole life on earth. And all, again, in the name of economic liberalism and free market.

It is also how the Western self-styled concept of human rights has been working within the framework of individualism, property rights and the rule of law. As Professor Edward Herman of Wharton School succinctly and instructively puts in his opening remarks:

Doesn't a growth process in which large numbers are immiserated while a small elite prospers necessarily entail serious human rights violations? In liberal theory, and in the definitions used by the major human rights organizations of the West: No. Human rights are political and personal rights...; they do not include economic rights to subsistence, education, health care, housing and employment. Thus if immiseration follows from the normal workings of the market system, based on the economic power of private corporations and banks, and with the help of the IMF, World Bank, US government, and a nominally democratic regime like that of Mexico or Chile, no human rights violations are involved.¹⁴

Looking ahead

So after three full centuries, the celebrated liberalism of the West only ends up by imposing its own specific set of human rights on the whole world as something absolute and universal. Might thus makes right, and unilateral "right" brings in its train arbitrary rule and social disintegration. This is the crux of the matter. The alternative way out of this destructive end, as Karl Polanyi suggested in his highly insightful reading into the history of Industrial Revolution, is to turn to "the principle of social protection aiming at the conservation of man and nature as well as productive organization,

¹³ Ibid., 133-137.

¹⁴ Edward S. Herman, "Immiseration & Human Rights", *Third World Resurgence*, Issue No. 58, June 1995, p. 41.

relying on the varying support of those most immediately affected by the deleterious action of the market ...”¹⁵ Or what, in the contemporary context, James Robertson conceives of as creating a global economy that is both human enabling and nature conserving.¹⁶ The social principle and practice such as this of course sounds quite familiar to our fellow indigenous peoples and rural communities. After all, it is precisely their traditional way of everyday life. There is nothing extraordinary about it. But, mind you, it becomes something so alien and subversive in the current world of industrialism, where the freedom of capital and free market turns into absolutism and totalitarian control over life on earth.

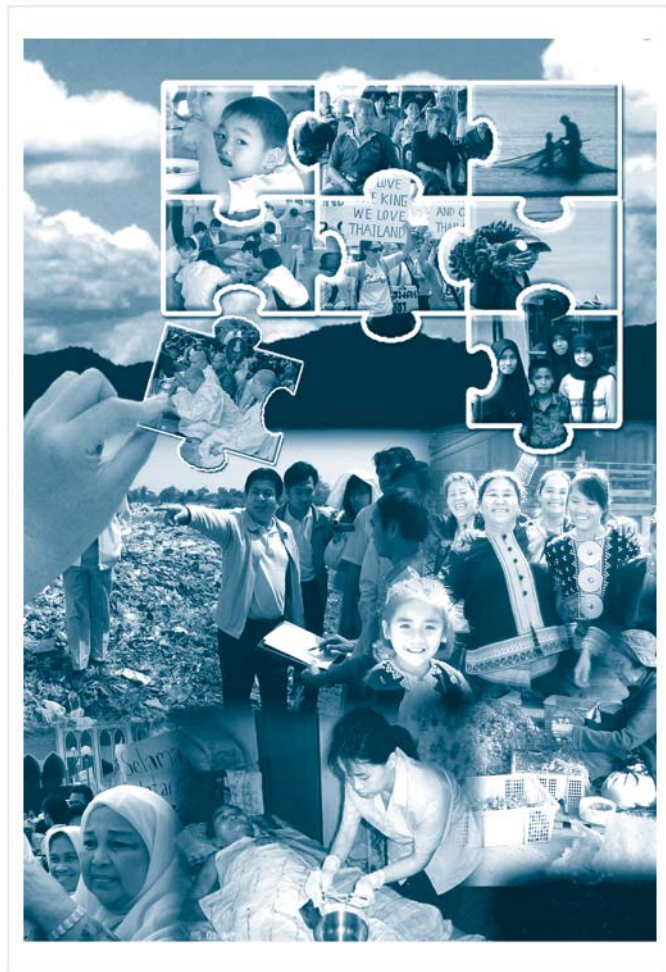
It is in this global perspective that the issue of bio-diversity and indigenous knowledge must needs address itself. As emphasized earlier on, it is the whole question of human freedom and progress that is at stake. But first and foremost, the grassroots peoples and communities must pull themselves together as united front in face to face with the transnational structure of power. As a matter of fact, because of its own overbearing abuse and aggrandizement, the agents of industrial capitalism – transnational corporations, the IMF, the World Bank, etc. – have to confront with strong protests and increasingly steadfast opposition from the common people, urban and rural, everywhere. But street actions and manifestoes in themselves would be of no avail without community rights being recognized and realized at the grassroots level, both in principle and in practice. As for the role of nation-states, little, if any, can be expected under the contemporary elite system that, more often than not, tends to be alienated from its own people. On the other hand, empowering local communities would greatly help consolidate nation-states vis-à-vis transnational encroachments. Humanity has gone through the age of nation building, modernization and development patterned upon Western industrial capitalism. Throughout, local communities have been neglected and their

¹⁵ Karl Polanyi, *op. cit.*, p. 132. Italics mine

¹⁶ James Robertson, *op. cit.*, p. x. Italics mine

traditional resource rights marginalized and trampled upon. The result is human impoverishment and natural degradation. In the circumstances, then, a new democracy is to be required and worked out with local communities as its base. Indeed, indigenous peoples and rural communities can significantly provide part of the answer.

There remains one final point to be taken note of here. The need for self-reform has already been earlier mentioned. The emphasis is on the principle of self-reliance and right to self-development. Community rights are being raised here, not just for the sake of defense mechanism against encroachment from outside, but mainly as the foundation of a new global democratic order, so that the principle of social protection and human-enabling/ nature-conserving economy can realistically be established. It is that, on top of the traditional resource rights as well comprehensively prescribed in the Draft Declaration on the Rights of Indigenous Peoples, something needs to be done with regard to the existing structure of power relationships within community itself. For one thing, for community rights to be universally recognized and respected, the value and rights of individuals must be well taken into account. In this respect, we can learn a good deal from the West, despite all its shortcomings. Coming into the changing and globalizing world, local communities also need human creativity. And true creativity can only come from free and open society. The point is that community rights as a system also need to allow for individual rights and creativity. Undoubtedly this is a highly delicate task inevitably involved in the process of social change. It is the fundamental question of how human aspirations and rising expectations, especially of new generations, can be accommodated and fulfilled. So this is problem of the future, and no status quo can ever provide solution. It is indeed the great challenge, that is, challenge from within. One only has high hope that local traditional knowledge and wisdom will be able to live up to its potential creativity in the common task of social reconstruction, globally and locally.





Minorities and Human Rights Problematics*

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As non-expert on minorities, let me just take an overview by way of making observations and raising some basic issues that may be of relevance to our discussion here. As a concerned citizen deeply affected by everyday infringements on human life and dignity, both within and around one's own homeland, my focus would be oriented somewhat towards what has been going on in mainland Southeast Asia as part and parcel of the world's tropical resource-based regions. Hopefully this very aspect of geo-political reality would be somehow taken into account in any meaningful dialogues and public policy consideration on the rights of minorities. It significantly adds a new dimension to the problems at hand. Not only that we would be better informed, but also of even more importance it should help throw more light on our common task of searching for objective and creative solution. The term "homeland" is deliberately emphasized here just to remind ourselves of one most legitimate human need, both real and imagined, that underlie the minorities' hard and never-ending struggles around the world.

What needs first to be realized is the fact that the current problems of minorities started out along with the modern nation building in the

* Discussion paper on Minorities and National Human Rights Institutions, parallel meeting, Sixty-first session of the Annual Meeting of the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights, Geneva, 12 April 2005.

Third World: Thailand, the new Siam, included. As we all know, it is all in the Westphalia-styled arrangement forcefully and arbitrarily imposed by the imperial West. There followed the regime of nation state, sovereignty, and the “mapping” of state boundaries. Historically, all this was instrumental in establishing peace and order in disorderly and anarchical Europe. But also significantly, it comes to serve as the sole criterion lawfully set for membership status in the so-called community of nations. It means that only the voice of entity as nation states could be effectively heard in all international dealings, such as in day-to-day activities under the current United Nations. In actuality, it is the exclusive voice of the powerful, and more often than not anathema to the minorities’ rights to exert their self-identity and self-determination. This is indeed the crux of the whole matter, in spite of all the talk about democratic process. Indeed, in spite of all the international Declarations.

As has been observed nowadays, there is a kind of built-in exclusiveness and absolutism in the concept and practice of state sovereignty itself that needs to be looked into. While it has been serving the purpose of state security fairly well, perhaps all too well, it has obviously become one most serious threat to human rights and security. Minorities, among all other under-privileged peoples the world over, become the exclusive victims. In fact, quite a few of them could very well be qualified as nations in terms of size, number, and social and political structure. Of course, all this does not at all mean that the state of human rights fared any better in the pre-modern Third World. In mainland Southeast Asia, as elsewhere, there were plenty of wars of aggression and all kinds of oppression, and even subjugation. But then at the very least, the indigenous peoples and communities were allowed to look after themselves and thus enjoy a degree of traditional autonomy. That was how their self-identities and ethnicity were preserved in practically all aspects of life: religions, beliefs, cultures, languages, as well as traditional knowledge and creativity. This last but not least, traditional knowledge and creativity, has particular

relevance to mainland Southeast Asia where a great number of natural resource rich communities, large and small, have per force been converted into “minorities”. More of this, to be later touched upon. In short, the principle and practice of exclusive state sovereignty itself turns out to be infringing upon human security and potential creativity.

It is precisely against this background of the current nation state regime that the phenomenon of minorities is being artificially created. It is merely man-made under a specific structure of power relationships that counts only the two levels of authoritative value: nation state and international community. And all this, with no due regard to the most basic social and political entities at the grassroots. That is why, under such domineering and oppressive structure, the number of minorities keeps on proliferating into quite a variety of forms and predicaments. This is well demonstrated, for example, in the case of those in the frontier areas between “Myanmar” and Thailand. Presumably, it is not much different elsewhere. The areas accommodate a good number of ethnic and tribal groups and communities, large and small, with socio-cultural identities and governing structures of their own independent of the others. A few like Shan, Kachin, and Chin, for instance, do have a high level of culture and governing structure as city state. As a matter of fact, all these “becoming minorities” have been struggling for centuries to preserve their identities and autonomy. And then suddenly under the newly-formed nation statism, there emerge new categories of minorities, lawfully dubbed “refugees” and “internally displaced peoples”, now numbering some 13 millions and 21.8 millions respectively all over the world, according to the U.S. Committee for Refugees’ Report. Of this, about 1 million within the nation state of Myanmar, and of course a good number unavoidably encroaching into the neighbouring Thailand.

All these phenomena have already been well known. It is the moot point as to how to deal with them. Sympathy and humanitarian aid abound and tirelessly keep on going. What is glaringly lacking is a kind of holistic

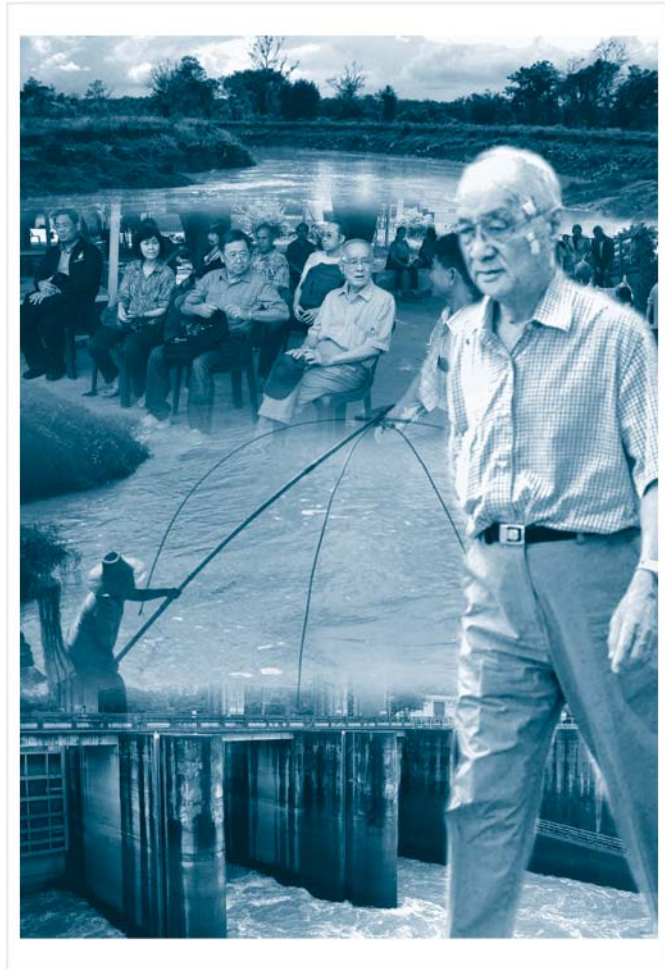
outlook and understanding to get to the root cause of the whole problem: the absolutism to the extent of totalitarianism of the modern nation state. The point is, in terms of human rights and human dignity, the principle and practice of “sovereignty” should not be merely narrowed down within the confine of nation state. It is in a bad need to be liberalized, yielding a rightful space of sovereignty to human and social and cultural identities, be it his or her personhood, belief, religion, language, and community. As one young Thai scholar at Thammasat University, with his thoroughly intensive field research experience behind him, succinctly asserts, it is a matter of those unfortunate’s “sheer fact of living” as being distinct from a “form-of-life” as politically invented and imposed from above, the exclusive sovereign. One does not know if and to what extent, under the current power politics, this vital point of human rights perception and development could be taken up in the auspicious occasion of the UN reform currently going on now.

And finally, for all the variations of minorities’ circumstances and predicaments, practically all have one thing in common. Mention has been made earlier on concerning the tropical resource base of mainland Southeast Asia. And along with that, rich biological diversity and indigenous knowledge and creativity. It is no secret that all this is the main target of acquisition and to be appropriated, by whatever means, through the process of globalization and free market expansionism. It is getting more and more intensive and extensive. So it is quite understandable as to the motivation and rationale in the hard and life and death struggles on the part of indigenous peoples. It is certainly not just for the sake of holding on to their homelands per se, but also with a view to freedom, quality of life, and sustainable future for themselves and their homeland. In fact, this side of the story has already been recognized and endorsed in a series of international instruments spelling out traditional resource rights of indigenous peoples that also include the clause on protection of minority culture and religious freedom. This again should be on the UN reform agenda

in order to put the principle into actual practice. It is obviously one major task that would greatly help rectify the gross imbalances and injustice that have been left untouched for too long, at the expense of real human freedom and progress.

That explains why the civil society movements keep on growing to join in the common task of promoting community rights, a new dimension of rights and liberties peculiar to the tropical part of the world. The key is to facilitate the indigenous peoples' right of access to local resources, a new perspective of decentralization. And that would gradually cut across the conflicting claims on nature and humanity with a view to human freedom and sustainable development. One could even imagine progress towards a kind of re-localization and globalization from bottom-up, a force to be reckoned with. In the process, the nation state regime together with its outdated brand of sovereignty would of necessity be transformed into the one that is to be shared and positively exercised by all parties concerned and at all levels of human society.







Natural Resources-Related Conflict Management: A Human Rights Perspective*

-Saneh Chamarik-

National Human Rights Commission, Thailand

Let me first of all heartily congratulate Khon Kaen University in taking up the issue of natural resources management in this distinguished forum. In view of the natural crisis and catastrophe all around us, this is a most propitious time for our collective resolve, North and South/East and West, to enlighten ourselves. And hopefully, that would also help stimulate the process of social learning further down to the grassroots people and communities as part and parcel of our invaluable resource base. That is certainly one main function and commitment for all institutions of higher learning. For reasons to be later touched upon, it has particular relevance to Southeast Asia, and Thailand for that matter, which is the focus of our attention here. By its own nature, it is bound to have a great bearing on the matter of life and livelihood, that is to say, basic human rights. That is why the whole issue comes well within the purview of our National Human Rights Commission here in Thailand in carrying out its task of human rights promotion and protection.

Incidentally, there is one interesting point to be observed in passing here, that is, the very name of our organizing host: Institute for Dispute Resolution. Curiously enough, in Thai it reads Sathaban Santi Suksa, or literally Institute for Peace Studies. Both of course amount more or less

* Keynote address to The IDR-KKU International Conference on "Natural Resources-Related Conflict Management in Southeast Asia", Kosa Hotel, Khon Kaen, Thailand, 6-8 September 2005.

to the same social objective, and could be said to be complementary to one another. While the former, “dispute resolution”, deals with day-to-day affairs, the latter, “peace studies”, is basically concerned with bringing about a process towards long-term solution of sustainability and peaceful coexistence in society with dignity, freedom, and justice. In this sense, what is being termed “conflict management” is both structural and institutional, involving people at all levels of society, indeed a truly democratic process that is so lacking in Southeast Asia. And that is the crux of the whole problem that urgently needs to be looked into.

Getting to know Southeast Asia

To begin with, it is the question of how Southeast Asia is to be looked at and objectively understood. So a brief description may be in order here. The region has generally been known for its geo-political and military position as the strategic sea route from the Middle East to the Pacific coast. That is only part of the whole story, however. Of more import still, and inherent in its strategic status, Southeast Asia constitutes one major part of the world’s biologically diverse tropical forests. With less than 7 % of the Earth’s land surface, these habitats accommodate more than half the species in the entire world biological resources and diversity. Of some estimated 3 to 10 million species that exist globally, about 70% are in the tropical forest areas.¹ As we all know, these plant species serve as the vital sources of food, medicine, shelters, and clothing: in short, all the necessities of our daily life dubbed “four-fold livelihood” in a Thai jargon. For all the vast quantity of the tropics’ genetic resources, fortunately or unfortunately, the state of human knowledge is still extremely limited. Of some 125,000 known plant species in the tropical forests, researchers have taken a cursory look at barely one in 10, and a close look at only one in 100. It means

¹ E.O. Wilson, “The Current State of Biological Diversity”, and Ariel E. Lugo, “Estimating Reductions in the Diversity of Tropical Forest Species”, in E.O. Wilson, ed., **Biodiversity**, Washington D.C, Washington Academy Press, 1988 pp. 8 and 60.

that, in spite of centuries-old deforestation and depletion of species and bio-diversity, there still remains a great potential for the creative future of mankind.² Indeed, it is a matter of human own choice. This is exactly the question of management and the conflicts involved we are concerned with here at this forum. It is then not just a matter of “dispute resolution” per se, but fundamentally part of the political process towards more intelligent future.

But before coming to that point, let us take a closer look at the delicate and sensitive nature, as well as cultural dimension, of bio-diversity itself. In the first place, the tropical forests and bio-diversity are not just patches or pieces of genetic resources that could be taken out at will. Within each region, they constitute one continuous space and inter-related whole. That is the reason why it is to be understood and acted upon as **one unifying resource base** transcending the international boundaries and internal divisions among localities and communities. Its integrity and sustainability must needs be a prerequisite, and conservation be upheld as a matter of principle in dealing with bio-diversity. Secondly, associated with this holistic worldview is also the inter-relatedness between various parts of the tropics: from the mountaintops down through lowlands to maritime areas. All so delicately exist in ecological equilibrium. Fragmentation of tropical forest space, for whatever reasons, poses a threat to their natural habitats and rapid destruction. And once they get lost, they are gone forever and further endangering to all the rest. For all the great variety of human mismanagement, it is estimated that 20-50% of the world's species

² Norman Myers, “Tropical Forests and Life on Earth”, in Suzanne Head and Robert Heinzman, **Lessons of the Rainforest**, San Francisco, Sierra Books Club, 1990, pp. 16-17.

have by now become extinct, and for the most part they occur within the tropical forests.³

And finally, along with the forests and bio-diversity, there also co-exist humans and society. That, again, poses the question of relationships between man and nature, and for that matter, management and utilization of natural resources. In a way, one is not quite sure if the term “management” is actually appropriate in this context. It sounds as if nature is entirely under human control or even worse, domination and manipulation. That, unfortunately, seems to be the case with modern scientific thinking and practicing of the scientific West. At any rate, it is otherwise in traditional Southeast Asia. In spite of century-old modernization and so-called development, it still remains tradition-bound for the most part of its rural sector, that is, as far as relationships with nature is concerned.

All this consideration brings us further to the question as to how indigenous people and communities fare and sustain their lives in such highly delicate and yet sustainable natural surroundings for centuries, generations after generations. The first thing, as one sees it, is a real need for a hard rethinking about what is termed “tradition”. For one thing, it is certainly not just about religious rites, beliefs, superstition, or what not. In essence, it represents a unique learning culture with spiritual value and awareness, and yet not without scientific connotation and intuition. And this, despite backwardness and underdevelopment, as is often assumed especially among national modernizing elite within Southeast Asia themselves. As well respected Indian scholars instructively put it thus:

³ Sumontha Prombun, “Bio-Diversity”, in **Bio-Diversity in Thailand**, (in Thai), Bangkok, Learn on Line 2002, pp. 9-11.

Somsakdi Sukwonges, “Conservation of Bio-Diversity”, in Wiwat Katithamnit, ed., **Bio-Diversity and Sustainable Development**, (in Thai), B.E. 2536, pp. 63-64.

The specific point concerning the tropical forests’ inter-relatedness and unifying entity was already raised in the speaker’s keynote presentation at the III MMSEA (Montane Mainland Southeast Asia) Conference, Lijiang, Yunnan, 25-28 August 2002.

For the cultures of Asia, the forest has always been a teacher, and the message of the forest has been the message of interconnectedness and diversity, renewability and sustainability, integrity and pluralism. And that,

The cultural lessons that Asian societies draw from the forest apply at two levels: the relationship between society and Nature on the one hand, and between people within society on the other. Societies modeled on the forest are based on the lessons of diversity and democratic pluralism⁴

Here then is the key phrase “diversity and pluralism” with a view to renewability and sustainability. This is what popularly called traditional wisdom and knowledge. Indeed, if there were to be any sense of positive “resources management” at all, it would rather incline towards human self-management with a deep sense of spiritual and intellectual attachment to Nature and its integrity. “Scientific” or not, the end result is certainly creativity and sustainability, as we keep crying for nowadays.

Question of Integrity and sustainability

By contrast, the Western values and practice are being tied up with and determined by the historically Scientific Revolution and subsequent Industrial Revolution. All of which gives rise to the creed of economic liberalism and free market imperialism with the strength of capital and modern scientific technology. In actuality, it is all for the ultimate purpose of domination. More often than not, it extends itself to the extent of absolutism, or even totalitarianism in the current age of Neo-Liberalism. As a result, materialism and industrialism have gone to the extremes, such that human and nature mean nothing other than commodities: i.e. as labour and raw materials for the sole purpose of profit maximization.⁵

⁴ J. Bankyopadhyay and Vandana Shiva, “Asia’s Forests, Asia’s Cultures”, in Suzanne Head and Robert Heinzman, ed., op. cit. pp. 66-67.

⁵ Karl Polanyi, **The Great Transformation: the political and economic origins of our time**, Boston, Beacon Press, 1957, pp.33-42.

All this serves as cultural and ideological background to the current Western-styled management of natural resources. Hence colonization of highly rich and productive tropical forests, all in the name of private property rights and so-called forest “scientific management”, by way of selective logging for example. But that only amounts to fragmenting the tropical resources base, and thus jeopardizing its ecological equilibrium, as earlier mentioned. This is the main and primary cause of deforestation as we all are witnessing today. All the reforestation attempts and projects only are bound to fail to reverse those destructive trends. But, then, logging business is only part of the whole story. Industrial-styled plantations also play their part in accelerating deforestation and loss of bio-diversity. As we all know, most plantation schemes are dominated by large-scale monocultures of exotic industrial species like eucalyptus, thus encroaching upon the basic principle of natural diversity and integrity.⁶

There is also another side of the story, that is, concerning indigenous people and communities’ predicaments under the circumstances. It is succinctly illustrated by one distinguished economic historian, Karl Polanyi, in his classic ***The Great Transformation*** as to rural dislocation and disruption of cultural institutions inherent in an organic society and community. The term “organic society” significantly conveys a strong sense of self-identities of indigenous people and communities. It explains why the idea and practice of “collective rights” have now been emerging, after being subject to domination and exploitation ever since the heydays of colonialism and modernization. That social and cultural disintegration inevitably means a great human loss. The point is that the survival of tropical forests and therefore bio-diversity integrity depend in the last analysis on the survival of human societies themselves. These adverse and negative effects clearly explain how the scientific management of natural resources has been

⁶ J. Bankyopadhyay and Vadana Shiva, op. cit. pp. 68-70.

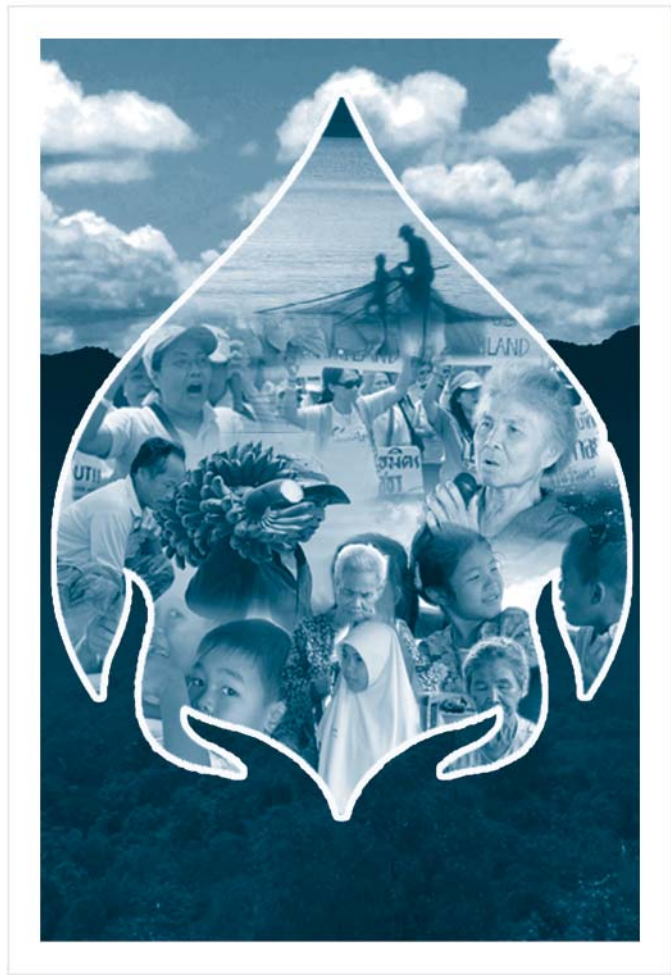
working. In effect, it is life-destroying, in contradistinction to life-enhancing that is characteristic of traditional way of co-existence with the Nature.⁷

Hopefully, all the above is not too long-winded. It is one necessary way of demonstrating what it means to Southeast Asia concerning conflict management of natural resources. It has historical and ideological connotation to the problems involved. In this very sense, it is far beyond a mere matter of management technicality for day-to-day dispute resolution. As earlier pointed out, it is basically the issue of power structure and relationships. As a prerequisite, therefore, it is to be concerned with basic political and institutional reform with a view to democratic pluralism and political process, that is, in line with reality of Southeast Asian societies, where the tropical resources base together with a great potential for self-reliance and self-development are at stake. That would then provide a positive and creative framework for natural resources-related conflict management. The point is to make it open, transparent, participatory, and hence truly legitimate.

⁷ Karl Polanyi, op. cit. p. 159.

J. Bankyopadhyay and Vadana Shiva, op. cit. pp. 73-74.







NHRC Thailand: Beyond Activism

- **Saneh Chamarik** -

The NHRC of Thailand is set up under the People's Constitution of 1997 as one among the 8 independent state agencies, being elected by the Senate through a selection committee, and royally appointed. It is required to be representative of the broad streams of thought in society, including the civil society groups and NGOs, as well as with a fair participation of male and female. All these criteria are well reflected in the current 11-member Commission. The whole idea is to make it accessible and responsive to people from all walks of life, particularly those underprivileged and disadvantaged. That also means that the NHRC does not work entirely on its own, but in close and continuing cooperation and networking with the civil society groups and organizations concerned. A good number of them are even brought in to participate in the Commission's decision-making process through its various sub-Commissions in the specific fields of human rights problems. Of course, the final decision and responsibility rests with the Commission.

Like its counterparts elsewhere, the Thai NHRC is constitutionally assigned with a comprehensive set of tasks for the common purpose of human rights promotion and protection. It ranges from examining and rectifying cases of human rights violation, policy recommendation, education and research and dissemination, cooperation and coordination with both government and private sectors, and annual report. But in the context of Thailand, like many other non-western nations, where modern human rights standards are something new and somewhat inconsonant with traditional culture of authoritarianism and patronage and also with fresh and adverse experiences of military dictatorships sponsored, ironically, by

the liberal West itself, all this is no simple matter. There is real and urgent need to do a rethinking, that is to say, far beyond a mere dealing with the specific cases at hand. As stressed in the 3rd ASEAN Workshop, May 2003, we need to clarify our own position as to who we are as the people and in what direction to go.

From the ASEAN dialogue and the Thai NHRC's own experiences, there are at least three considerations that need to be taken care of in the process of carrying out our mission for the promotion and protection of human rights. First and foremost is the task of common people's capacity building. Here human rights education has a most vital role to play. This is not just the matter of formal one in schools or universities, though. It needs to be carried through the investigating process right on the spot where the incidents of human rights violation take place. The point is to draw upon the participation of all the parties concerned with a view to promoting social learning and training in real life. Then relevant research could be taken up in a systematic way to have disseminated all such concrete experiences to the public at large. All these case studies could indeed very well be fed back into the curricula of those educational institutions concerned. In sum, to make human rights a truly objective and relevant as social learning, both in and out of school, with civil society participation and people-to-people cooperation.

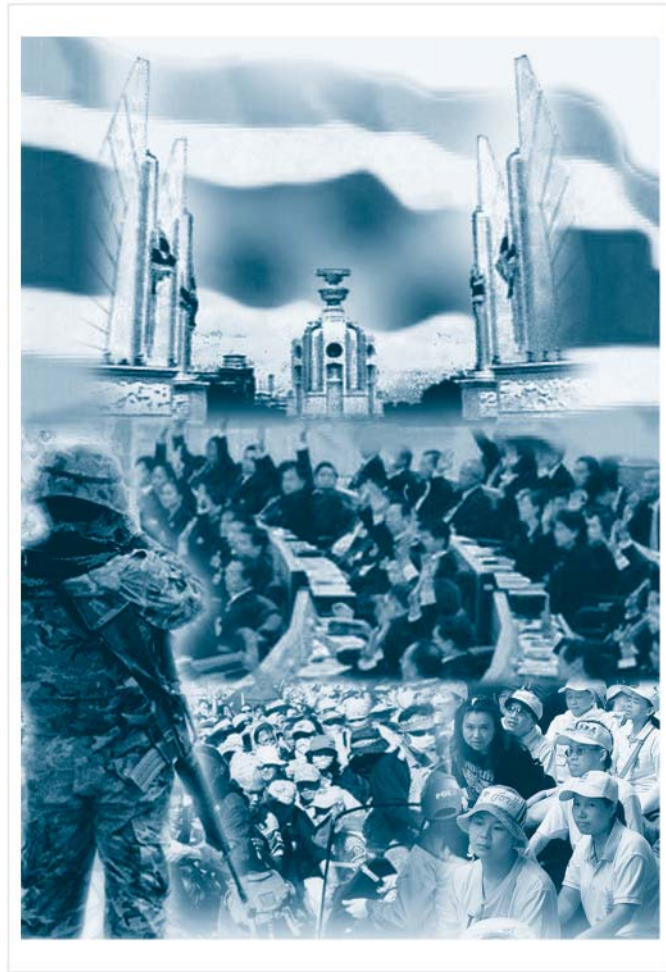
Secondly, is a holistic view to be taken with fellow human beings in question as the centre of attention, not on the basis of which and which category of human rights they belong to in the reductionist fashion of current international standard and practice. For, again, in real life especially in the non-western world, both the CPRs and ESCRs are closely inter-related and interdependent in the incidence of infringements on human right and human dignity. Indeed, more often than not, they form a unifying whole. In Thailand, we have been witnessing cases of ESCRs violation spilling over into CPRs problems. The legitimate public protests against the gas pipelines project in the South is one such good example that soon gives rise to

violence on the part of state authorities. And, interestingly, according to the NHRC's examining report, those involved in the incident are not confined only to the operating police officers, but also include the ones in higher up accountable both at the level of field command and at ministerial policy level. Nothing has been done about all these wrong doings so far, despite the NHRC's report accordingly. At any rate, it is one of those cases that is clearly valuable and relevant in the process of human rights education as mentioned above.

And finally, there currently emerges the collective and communal dimension of human rights that has been widely and increasingly articulated and demonstrated under the adverse social and cultural impact of post-war economic development and globalization. And now the community rights come to be recognized and guaranteed under the current reform-inspired 1997 Constitution. This is characteristic of Thailand as part and parcel of the world's tropical resource-based regions, and for that matter the ASEAN as a whole. Indeed, the NHRC of Thailand earnestly looks forward to close and concrete cooperation and coordination in this particular field within the region. In a sense, this is in contradistinction to unbridled individualism and private property rights of the West. All of which is not quite universal as it is made out to be. So the common efforts in this direction would greatly help contribute to the process of universalizing human rights with a view to cultural pluralism and diversity, while doing away with both essentialism and relativism: one claiming monopoly of the partial definition of human rights, while the other denying the universality of human aspiration for freedom.

All these lines of thought are within the purview of the NHRC of Thailand, and hopefully we can get somewhere. At least, a sense of direction has been set, and this is what we have been trying to do in a most tedious process of institution building and development of human rights culture at all levels of society.







The Role of National Human Rights Commission, Thailand *

- Saneh Chamarik -

Preliminary remarks

On behalf of the Thai NHRC, let me first join in expressing our gratitude for the FNS' continuing efforts in promoting human rights dialogues, and for giving us the opportunity to take part in this particular inter-regional forum. As a new comer with somewhat different background and incidence of human rights problems, one indeed expects in this process of consultation not only to learn, but also to be heard. Out of this process of mutual learning, a concrete programme of cooperation and coordination could then be arrived at for the common purpose of human rights protection and promotion.

In discussing the role of national human rights commissions, it is extremely important to bear in mind three basic points of common understanding. These are inter-related. First is the question of the nature and reality of human rights itself. Notwithstanding universality as a matter of principle, human rights are concerned with the moral claims or ideas and practices *created by people* to legitimate *particular interests in particular historical, social, and economic circumstances*. To put it strictly on empirical ground, human rights constitute the straightforward result of people's aspirations and struggles, and hardly characteristic of any specific culture

* Presented at the Conference on National and Regional Systems for the Promotion and Protection of Human Rights, organized by the Friedrich Naumann Stiftung, Strasbourg, France, October 7-11, 2002.

or tradition.¹ As a matter of fact, this is precisely what did actually happen in the great liberal revolutions over two centuries ago in the course of modernization in the West, and which in turn inspire the ideal of freedom and democracy around the world.

Secondly, this simple truth about human rights further means that, along with universality, there is bound to be proliferation and inter-relatedness of rights and liberties, as well as obligations, in a great variety of forms and substances under specific historical, social, and economic circumstances. This is well reflected in the increasing number of international human rights instruments created by the democratically-inspired part of the UN. It is an ongoing and never-ending process.² And lately, the UN General Assembly comes up with the Millennium Declaration 2000, summing up various aspects of human predicaments into the global and common purview, thus broadening the scope and perspective of human rights promotion and protection even further along with the issues of development, poverty, and environment.

And finally, there need not be discrepancies and contradictions between universality or generality and specificity or diversity inherent in human rights discourse. Indeed, in order for the dialogue to be meaningful, it must needs be in the spirit of mutual learning based on the shared principle of human dignity and fundamental freedom. To start with, all the

¹ Tony Evans, "Introduction: power, hegemony and universality of human rights", in Tony Evans, ed., *Human Rights Fifty Years On*, Manchester University Press, 1998, p.4
Heiner Bielefeld, "Western Versus Islamic Human Rights Conception"? A Critique of Cultural Essentialism in the Discussion of Human Rights." *Political Theory*, vol. 28, No. 1, February 2000, pp. 96-97.

² As Jacques Maritain observes:

No declaration of human rights will ever be exhaustive and final. It will ever go hand-in-hand with the state of moral consciousness and civilization at a given moment in history.

Cited in Joseph A. Camilleri, "Human Rights, Cultural Diversity and Conflict Resolution: The Asia Pacific Context, *Pacific Review*, Vol. 6, No. 2, 1994, p. 20.

ambivalence and controversy should by now be put to rest concerning both cultural essentialism and relativism. The former claiming monopoly of the definition on human rights, while the latter denying the universality of human aspirations for freedom. The two, thus far, can only indulge in self-styled futile polemics, and actually get us nowhere. Worse still, it all brings about retrogressive and destructive politics of human rights the world over, East and West, North and South. We are witnessing today, in particular, the abuse and distortion of the cherished ideal of individual liberties and property rights on the one hand, and on the other hand, the authoritarian claim of development priorities over freedom and democracy. Both turn against humanity and nature.³ As we are all well aware, human society has gone through the process of economic development and globalization for so long under such adverse conditions and at great human and social costs. And then abruptly came along the self-proclaimed war on terrorism and, along with it, the threat and potential loss to the cause of human rights.⁴ It is indeed high time to earnestly and collectively put things right, conceptually and practically.

One only hopes that these considerations would get a reasonable hearing in international forum such as this. It is certainly relevant and should serve as a background to our mutual interest and purposeful dialogue with the firm conviction that people's rights and liberties indeed hold the key to the future. This is what we should have in mind in coping with the status and role of national human rights commissions as well as the prospect for regional mechanism in Southeast Asia and elsewhere.

³ For example, Edward Herman, "Immiseration & Human Rights", *Third World Resurgence*, Issue No. 58, June 1995, p. 41; Vandana Shiva, "The Enclosure of the Commons", *Third World Resurgence*, Issue No. 84, 1997, p. 6; Lee Kuan Yew's address to an annual conference organized by the Philippines Business Council in Manila, and President Fidel Ramos' response, *The Nation*, Bangkok, 21 November, 1992.

⁴ In Mary Robinson's view, "If human rights are respected ... conflict, terrorism and war can be prevented." *Boston Globe*, September 3, 2002.

The case of Thailand to be presented here is no exception. For, after all, human rights commissions or any other mechanisms simply do not exist and perform in a vacuum, void of economic, political, social, and cultural contexts.

Background

The NHRC is the first of its kind in Thailand and only just a little over one year old, being established as of July 2001. It is created under the 1997 Constitution, popularly dubbed People's Constitution, something equivalent to the "People's Power" slogan during the anti-Marcos regime uprising in the 1980s Philippines. It is still in its formative stage. On top of the assigned tasks and function set by law,⁵ a strategic plan and programme of action needs to be worked out. This is to take into account historical and circumstantial background, the state of knowledge and situation of human rights, the question of how to get organized both within and in relation

⁵ Constitution of the Kingdom of Thailand B.E. 2440 (1997), Section 200:

"The National Human Rights Commission has the powers and duties as follow:

- (1) to examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts for taking action. In the case where it appears that no action has been taken as proposed, the Commission shall report to the National Assembly for further proceeding;
- (2) to propose to the National Assembly and the Council of Ministers policies and recommendations with regard to the revision of laws, rules or regulations for the purpose of promoting human rights;
- (3) to promote education, researches and the dissemination of knowledge on human rights;
- (4) to promote co-operation and co-ordination among Government agencies, private organizations, and other organizations in the field of human rights;
- (5) to prepare an annual report for the appraisal of situation in the sphere of human rights in the country and submit it to the National Assembly;
- (6) other powers and duties as provided by law.

"In the performance of duties, the National Human Rights Commission shall also have regard to the interests of the country and the public.

"The National Human Rights Commission has the power to demand relevant documents or evidence from any person or summon any person to give statements of fact including other powers for the purpose of performing its duties as provided by law"

to society at large, etc. A brief account of background leading up to the People's Constitution and NHRC may well be in order here, to begin with.

Upon reflection, it is largely the end result and consequences of ongoing socio-economic transformation ever since Thailand under military dictatorship in early 1960s stepped into development and industrialization predicaments, just like many other developing countries. The initiative significantly came from the World Bank and the IMF, the twin global politico-economic Leviathan of the post-war. That brought about structural changes and the rise of urban middle classes, along with widespread poverty and rural marginalization, as well as natural degradation. All this is well known global phenomenon, there is no need for further elaboration here. Suffice it to say that the growth-oriented development and related public policy itself is the root cause of human sufferings and thus flagrant encroachment on the basic right to livelihood and self-development. It is a great pity that these simple economic, social and cultural rights are still not counted as human rights, and therefore shunned entire responsibility by the global power that be, especially within the historically freedom fighters' "liberal" circle itself.⁶ Anyhow, within a short span of time in early 1970s, there occurred mass uprisings under the combined forces of new middle classes and student movements. The fall of the junta and military disunity led to coup after coup, which was somehow followed by gradual transition to civilian rule around late 1980s. Then, again, another hangover and short-lived military coup in 1991 provoked another massive revolt

⁶ Professor Edward Herman of Wharton School, interestingly and succinctly, has this to say:
Doesn't a growth process in which large numbers are immiserated while a small elite prospers necessarily entail serious human rights violations? In liberal theory, and in the definitions used by the major human rights organizations of the West: No. Human rights are political and personal rights ...; they do not include economic rights to subsistence, education, health care, housing and employment. Thus if immiseration follows from the normal workings of the market system, based on the economic power of private organizations and banks and with the help of the IMF, World Bank, US government, and nominally democratic regime like Mexico or Chile, no human rights are involved. Op. cit.

among the urban middle classes, popularly known as Black May, the following year. This time around, the whole country came under enormous and nationwide pressure and demand for political reform. “Reform” now becomes the catchword reflecting the rising and restless expectations among Thai people at all levels of society. It turned explosive to the critical point that the old-time politicians were obliged, however reluctantly and half-heartedly, to bend to the popular will to have created a new and reform-spirited Constitution.

However, the gap between the newly-acquired rights and liberties as written into the Constitution, and the reality of power of enforcement still very much remains. Such a political predicament vividly reminds one of the late Sir Josiah Crosby, British Ambassador at the time of the 1932 Revolution, who articulated the grave concern for democracy without the force of public opinion.⁷ More often than not, they are nonchalantly ignored under popularly-elected parliamentary rule. The state of affairs seems not much different from the previous authoritarian one. The big difference is that the people now are so articulate and much better aware and inquisitive of what has been going on in the country and the world outside. Besides, there arise increasing number of non-governmental and civil society groups, as well as all sorts of mass media, to pose collectively and often aggressively as watchdog against any wrong doings on the part of the power that be.

This is roughly what the Thai NHRC finds itself in. It took a fairly long and complicated process to get the whole 11-member Commission elected through a selection committee and the Senate, and then royally appointed. The selection committee’s composition is interesting. Its 27 members include 4 from state agencies, 5 from academic institutions, 10 from private organizations, 5 political from political parties, and 3 from public media. Each nomination must be passed by votes of not less than $\frac{3}{4}$ of all

⁷ Josiah Crosby, *Siam: The Crossroads*, London, Hollis and Carter Ltd., 1945, pp. 89-90 and 152-153.

the members. As for the Senate, each nominated individual must also be passed by secret ballot with more than one half of the total number of Senators (200), also with a proviso that account must be taken as to the participation of women and men.⁸ This is how the Thai NHRC came into being. The whole idea is to have a kind of Commission that is representative of the society's viewpoints as broadly as possible. On the whole, it can fairly be said that non-governmental organizations and civil society groups have been carrying quite a considerable weight in the selection stage and thereafter. And this is well reflected in the composition of the current NHRC itself.

The task ahead

Mention has already been made with regard to the reform spirit of the "People's Constitution", even though somewhat against the will of political-cum-business careerists. At stake is the enormous vested interests which are rapidly expanding as the whole country has been undergoing top-down economic development and globalization. In such political predicaments, it is of no surprise that this particular Constitution is generally understood as being created out of distrust of the good old-time style of corrupt money politics, and that the solution is to be found in promoting "people's politics" as a balancing force. Hence the specific attention attached to the common people's rights and active participation at this critical juncture of Thai political and economic transformation. At least on paper, this appears to be the case, as clearly stated in its preamble thus:

...the essential substance (of the Constitution) lying in promoting and protecting rights and liberties of the people, providing for public participation in the governance and inspecting the exercise of State power ...

⁸ National Human Rights Commission Act, B.E. 2542 (1999), Section 8.

It is also the first time in Thai constitutional history that “The human dignity, right and liberty of the people” is being exerted under the first chapter on General Provisions. And this is followed by Section 5: “The Thai people, irrespective of their origins, sexes or religions, shall enjoy equal protection under this Constitution”. So from the NHRC’s perspective, it can obviously be inferred of human rights as *the guiding principle* and criterion for appraising and examining the legitimate exercise of power of all the three sovereign branches of governance and other State agencies. The question of principle is well clarified by the provisions under both Chapter 3 “Rights and Liberties of the Thai People”, Section 27, and Chapter 5 “Directive Principles of Fundamental State Policies”, Section 75. According to Section 27,

Rights and liberties recognized by this Constitution expressly, by implication or by decisions of the Constitutional Court shall be protected and directly binding on the National Assembly, the Council of Ministers, Courts and other State organs in enacting, applying and interpreting laws.

And Section 75 reads:

The State shall ensure the compliance with the law, protect the rights and liberties of a person, provide efficient administration of justice and serve justice to the people expediently and equally and organize an efficient system of public administration and other State affairs to meet people’s demand.

The State shall allocate adequate budgets for the independent administration of the Election Commission, the Ombudsmen, the National Human Rights Commission, the Constitutional Court, the Courts of Justice, the Administrative Courts, the National Counter Corruption Commission, and the State Audit Commission.

The last paragraph is being cited in full here in order to present an overview of expected “public participation in the governance and inspecting the exercise of State power” from the various angles of State’s activities, as provided by law. The NHRC serves as one among the newly-created independent institutions. Unlike all the others, though, it does not have the authority to pass judgment or impose penalty on anybody. This is correct, however. Its real task is basically to see to it that the State authorities concerned do their proper jobs, and along with that to assume an enabling role in promoting social learning and awareness. For the purpose, the NHRC attaches great value and importance to education, research and the dissemination of knowledge on human rights. These are of course prescribed by the Constitution as part of the NHRC’s functions. But the point is to make it a proactive approach to the whole task of human rights promotion and protection. For, despite its official status as State agency, it is strongly believed that its effectiveness rests in the last analysis with the society as a whole. All this means that the NHRC is to organize itself in such a way as to serve not only as rights defenders, but also as social-learning promoter. That is why we take it upon ourselves the task and working principle to serve as part and parcel of society, not apart from it. That is to say, to be open, transparent, and accessible to the public at large.

Before going further to the question of how to go about fulfilling our job as intended, one most significant point needs to be brought to attention here for the benefit of mutual learning and understanding. Earlier on, mention has already been made concerning the nature and reality of human rights in a great variety of specific contexts and circumstances that bring about human aspirations for freedom. The universality of human rights is indeed dynamically created out of this plurality. In other words, what we are really looking for is unity in diversity, and certainly not authoritarian or totalitarian brand of universality where only might makes right. Thailand is one such case, like any others that have been going through decades of

globally imposed economic development, as we all know. One can of course keep arguing without end as to the merits and demerits of development and globalization. The real and ultimate question, nevertheless, is how the real peoples fare in their varying social and cultural contexts. That is to say, in terms of human life and blood, not GDP as an end in itself. And that gives rise to an entirely new dimension of human rights problems.

At this point of human history, then, it is indeed high time to seriously raise the question of the impact of development and globalization. Indeed, as Helle Degn succinctly remarks in this very forum, it is not just the question of economic crime and corruption that is being involved. Of even more significantly, the whole thing brings in its wake adverse repercussions on the natural resources and environment and thus the integrity of human rights.⁹ The whole world now comes to keep talking about it more often - somewhat on high moral grounds, however. Few, including even among "human rights defenders" themselves, actually realize how intimately the life and blood of common people is involved in the issues of natural resources and environment. This is most obviously the case with those rural peoples and communities in tropical resource-based regions. Southeast Asia is one such prime example. Unfortunately, it is something overlooked within the ranks of ASEAN leaders. Or if ever appreciated, it is merely in terms of immediate trade and commercial gains, in the fashion of top-down globalization, and as always at great human and social costs. Such a state of affairs is obviously and directly concerned with the question of the right to livelihood and self-reliant development. One wonders if and to what extent that could be worked out to serve as the common basis for cooperation and coordination under whatever regional mechanism we have been talking about.

⁹ Helle Degn, Commissioner of the Council of the Baltic Sea States on Democratic Development, in presentation on National Human Rights Institutions: Europe, Strasbourg Conference 8 October, 2002.

The 1997 Thai Constitution, somehow, is more or less a reflection of attempt to rectify such an untoward state of affairs. It is for this very reason that the idea and practice of community rights is being put forward and stipulated into law, again under both Chapters 3 and 5 on “Rights and Liberties of the Thai People” and on “Directive Principles of Fundamental State Policies respectively, as follow.

Section 46: Persons so assembling as to be a traditional community shall have the right to conserve or restore their customs, local knowledge, arts or good culture of their community and of the nation and participate in the management, maintenance, preservation and utilization of natural resources and the environment in a balanced and sustainable fashion, as provided by law.

Section 56: The right of a person to participate with the State and communities in the preservation and utilization of natural resources and biological diversity and in the protection, promotion and preservation of the quality of the environment for normal and consistent livelihood in the environment which is not hazardous to his or her health or sanitary condition, welfare or quality of life, shall be protected, as provided by law.

Any project or activity which may seriously affect the quality of environment shall not be permitted, unless its impacts on the quality of the environment have been studied and evaluated and opinions of an independent organization, consisting of representatives from private environmental organizations and from higher education institutions providing studies in the environment field, have been obtained prior to the operation of such project or activity, as provided by law.

Section 59: *A person shall have the right to receive information, explanation and reason from a State agency, State enterprise or local government organization before permission is given for the operation of any project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning him or her or a local community and shall have the right to express his or her opinion on such matters in accordance with the public hearing procedure, as provided by law.*

And Section 79: *The State shall promote and encourage public participation in the preservation, maintenance and balanced utilization of natural resources and biological diversity and in the promotion, maintenance and protection of the quality of the environment in accordance with the sustainable development principle as well as the control and elimination of pollution affecting public health, sanitary conditions, welfare, and quality of life.*

The idea of community rights would sound inconceivable and illegitimate to the mind-set of cultural essentialism, as referred to right at the beginning of this presentation. Never mind about that. Community rights, like all others in human history, arise out of the struggles against oppressions under a great variety of specific circumstances. It is as simple as human nature itself. What we have been facing now is the fundamental question of development and globalization that needs to be urgently and thoroughly reexamined and set in its proper perspective. The same is true with community rights presented here. They are by no means a ready-made formula. Even though being built-in everyday life in traditional communities and recognized by the Constitution, they are still in the process of evolving in the face of changing world around. Neither do they necessarily mean communities or collectivities taking precedence over individuals. That would amount to turning the clock back, and bound to fail. Traditional

communities too, for all their highly valuable knowledge and wisdom, are in a dire need to learn to keep up with the time and change while sustaining their integrity. Individual rights and liberties obviously constitute a most vital part of this learning process. Only that it ought to be rights and liberties of individual or person-in-community,¹⁰ and certainly not the one in a vacuum and on its absolute self as is the case today.

Institution building and networking

What has been said points to a real need for a certain rethinking about the changing state and dimension of human rights in the globalizing world. So along with the day-to-day functions set out by law, supposedly the same everywhere under the Paris principles, the Thai NHRC finds itself obliged to take into account the changing circumstances and common people's rising aspirations for freedom. A point has already been made of the intended pro-active and enabling role to serve as social-learning promoter and as part and parcel of society, not apart from it. In this very sense, the NHRC conceives of itself as integral part of the process of *social institution* building. It is not for its own sake as State agency, but for the ultimate purpose of strengthening the Thai society and people as a whole to develop along the common path of freedom and progress. If what is called "human rights culture" building is to mean anything at all, this is it. It is the question of how mutual sense of belonging is to be created between itself and the public at large. That is why, at this formative stage, a great deal of attention is being attached to the way the whole NHRC is to organize itself and interrelated with society. One best conceivable way is to have the whole operating system organized through the multi-tiered networking.

¹⁰ Herman E. Daly and John B. Cobb, Jr., ed., *For the Common Good: Redirecting the Economy toward Community, the Environment, and a Sustainable Future*, Green Print, 1990, pp. 161-165.

The main idea is to set up a sort of built-in process as part of the system in which people from various walks of life could join in. As far as the task of human rights promotion and protection is concerned, it is not to be left to the bureaucratic mechanism alone. That in itself would most likely defeat the whole purpose of having the NHRC *as open institution for social learning*. The first tier of networking has now been settled, at least for the beginning stage. It could be called tripartite coordinating mechanism, consisting of Commissioners, secretariat officers, and citizens. The last but not least could be selected from academic communities, NGOs, civil society groups, workers, farmers, or other professional and vocational groups, who are deemed qualified as human rights defenders. The whole thing is organized and divided into a number of sub-Commissions according to the subject matters involved and each being equipped with a degree of legal authority in performing their duties. What is particularly significant about this first tier of networking is that all the three parties concerned are to make joint preliminary decisions as to how to proceed with the cases or policy studies assigned them. The final decision and responsibility rests of course with the NHRC, according to the Constitution. All this is roughly how the working process is being worked out. The following groupings and lists of sub-Commissions could help demonstrate the scope and scale of problems and issues being taken up by the current Thai NHRC.

Group 1: Coordinating sub-Commission on Human Rights Protection:

- Human Rights Protection sub-Commission 1,
- Human Rights Protection sub-Commission 2,
- Human Rights Protection sub-Commission 3.

Group 2: Coordinating sub-Commission on Law and Judicial Process:

- Law sub-Commission,
- Judicial Process sub-Commission.

Group 3: Coordinating sub-Commission on Social Affairs:

- Sub-Commission on Media and Social Relations,

- Sub-Commission on Education and Development,
- Sub-Commission on Human Rights Education,
- Sub-Commission on Health and Environment,
- Sub-Commission on Children, Youth, and Family.

Group 4: Coordinating sub-Commission on Natural Resource Base:

- Sub-Commission on Technology and Intellectual Property,
- Sub-Commission on Energy, Industry, and Environment,
- Sub-Commission on Tropical Forests and Bio-Diversity,
- Sub-Commission on Marine Resources,
- Sub-Commission on Land and Water.

On top of all these, there are also other sub-Commissions dealing with specific cases on wide-ranging issues such as refugees, ethnic groups, HIV patients, delinquents, labour, land disputes, including disputes arising from the public projects like express ways, electric plants, gas pipelines, etc. Needless to say, all the sub-Commissions and subject matters involved are closely inter-related. That is why there needs to be grouping of the sub-Commissions concerned for coordination, and of course the whole thing comes under the NHRC's ultimate decision and responsibility.

The first tier of networking as described contains within itself the second tier, as most sub-Commission members, if not all, have their own professional or civil society networks to begin with, such as Universities, Law Society of Thailand, the NGO Coordinating Committee on Rural Development (NGO-CORD), Civil Liberty Union Association, Human Rights Coordination Committee, Women's Rights Groups, Youth and Children Rights Groups, Forum Asia, etc. So while the first-tier tripartite networking directly takes part in the process of decision making, the second one could be called upon for consultation and advice on the matters at issue, or even help in investigation of specific cases with a certain degree of authority.

As for the rest of networking, it is still in progress. As a matter of fact, this is intended to serve as the open-end and built-in process of the

NHRC's performance. The idea is to keep in touch with various civic and vocational groups at all levels of society, both urban and rural. This is to be two-way traffic and mutual-leaning and continuing process. And here, the task of research, education and dissemination is to play a major role: i.e., to keep the public informed and taking part in the social sanction and enforcement of human rights promotion and protection.

One thing to be particularly stressed is that, in spelling out the Thai NHRC's considerable interest in the matters of public policy and long-term development of human rights culture, it does not mean at all that less attention would be given to the day-to-day human rights violations which abound. On the contrary, it is well understood and agreed upon within the current NHRC that every complaint or case known will be taken up, and proceeded even further beyond remedial measures of specific cases. That is to say, all the cases that have gone through the sub-Commissions concerned will be registered and taken up for study or research with a view to legal reform, or rectification of public policy if necessary. In dealing with the matters of public policy, it is also understood that the NHRC takes it as a rule not to interfere with the Government's decision making in carrying out its executive authority. It is to be concerned strictly with the question of human rights violations as prescribed by the Constitution, such as the rights of expression, to be informed, to participate in public hearing, etc. If the law and policy execution turns out to be unjust or inappropriate, then a change or correction is to be recommended accordingly.

Summing up: regional perspective

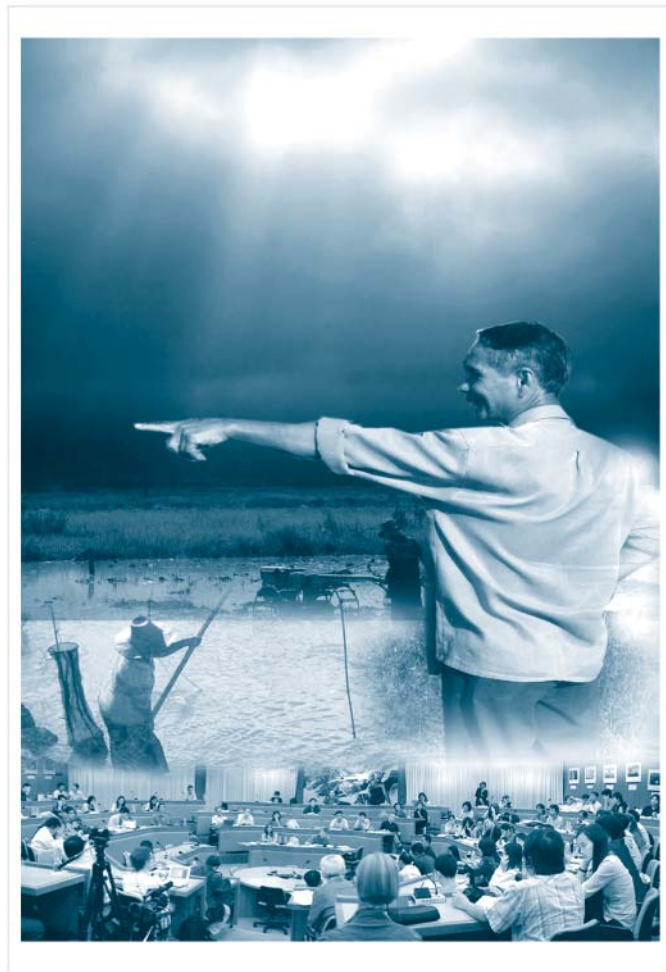
Thai society, like many other fellow Southeast Asian neighbours has been going through structural changes under the adverse impact of economic development and globalization during the past four decades. Notwithstanding attempts at democratic reforms under the forces of popular uprisings in the 70s and 90s leading up to the current People's Constitution of 1997, the legacy of authoritarianism traditionally built into

the “bureaucratic polity”, in political scientist Fred Riggs’ jargon, still very much remains. So also the widespread problems of human rights violations. The state of affairs then is worsening and complicated around the 70s when the Thai economy has been further integrated into the global economic and financial orbit of neo-liberalism, with the World Bank, IMF, and WTO as the tools of expansionism and domination. At the behest of the so-called Washington Consensus, Thailand has been forced to come under the politico-economic formula for further economic globalization: liberalization, deregulation, and privatization. Indeed, the whole Southeast Asia has been made to fall under the same predicaments. All this makes all the human rights problems a great deal more complex in terms of causes and effects. What is common to all the countries in this region, in fact the whole world, is that the issues of economic, social, and cultural rights assume a most prominent place for all human rights defenders and advocates to work on. As a matter of fact, they are closely inter-related to the civil and political rights. The ones more often than not lead to the others, as amply demonstrated in numerous cases of human rights violations in Thailand. These concrete experiences indeed make a lot of sense the indivisibility, inter-relatedness, and interdependence of all human rights. Any NHRC or regional mechanism anywhere has to keep this reality in mind in carrying out the task of human rights promotion and protection, if it is not intended to fail in its task.

Furthermore, even the economic, social, and cultural rights themselves assume quite a different meaning in a rural and resource-based society like Thailand, and for that matter Southeast Asia as a whole. While in industrial societies where economic and social rights would rely on welfare state measures as solution, in rural and resource-based contexts, people aspire mainly to the rights of self-reliance and self-determination. And that is indeed true to the spirit of liberal tenet, by the way. This is what is being meant by “community rights” as stipulated under the current “reform” Constitution of Thailand. Surely, it also has a certain relevance elsewhere. If so,

the regional human rights mechanism might just as well has something concrete and in common to start with. What is particularly important in this line of proposition is that it all starts with the people, having little if any to do with the question of State sovereignty which more often than not stands in the way to work towards human rights and fundamental freedom.

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