

HUMAN RIGHTS IN ASIA:
CONDITIONS, PERSPECTIVES AND REMEDIES

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I. INTRODUCTION

It is to be questioned whether it is really meaningful to talk about "human rights in Asia", when there is little in common among the countries which form the region called "Asia".

"Asia" is a conglomerate of diverse countries which can more easily be compared with countries of other continents than with their neighbours. What then are the grounds for discussing "human rights in Asia"? If the efficacy of the regional protection of human rights resides in the applicability of legal norms to the concrete situations related to human rights in all the countries of the region, it is evident that Asia is not a "region" as far as human rights are concerned, given the apparent absence of common criteria for judgement.

Nonetheless, those who study different types of human rights situations in Asian countries might identify certain similarities in the conditions leading to disrespect for human rights, as well as common socio-cultural reaction to human rights violations.

It is worth investigating whether there in fact exist certain similarities in the approaches to human rights in Asian countries, despite the varieties of forms that human rights problems can take under different political and military circumstances. We can then define specificity of approaches to human rights in Asia and speculate upon possible and realistic co-operation for the promotion of human rights in the Asian region.

The first section will examine the prevailing conditions that determine the context of human rights in Asia, giving specific examples of human rights problems arising from these conditions. As a starting point, we will take those rights which are enshrined in the Universal Declaration of Human Rights, with a view to enquiring what types of rights most concern the Asian region and whether there are differences of nuance or emphasis between the conceptions of human rights that emerged in Asia and those underlying the Universal Declaration.

The second part of the paper will suggest new orientations in human rights

research in Asia. The emergence of these orientations seems to coincide with the general reawakening of self-consciousness in the Asians. Aware of the insufficiencies of a blind acceptance of human rights formulated in other contexts, the Asians try to be more independent in implementing human rights and reformulate the concept of human rights outside the vested interests of old and new colonial powers. Being conscious of the rhetoric and fever on the human rights question which were the results of the tri-polar conflicts and North-South tension, the Asians attempt to avoid the unreflected and vulgar use of the terms "human rights" which is itself relative to international relations.

II. PREVAILING CONDITIONS DETERMINING THE CONTEXT OF HUMAN RIGHTS IN ASIA

About thirty years ago, when the Asian countries became independent, there were few governments which were explicitly committed to the ideals of human rights. Problems of national consolidation and security in a particular international structure overrided all other concerns (Table 1 for military and economic aid given by the United States and Japan suggests different geopolitical conditions of Asian countries). Conscious of the political and economic dependency relations with the Western colonial powers, the Asian States gave priorities also to economic growth, in the hope of achieving the maximum of independence vis-à-vis the Western industrial hegemony. Many Asian countries have experienced a period of partial rejection of Western-based ideals, including human rights, which seemed to be a luxury of rich Western countries.

Yet no State would voluntarily violate human rights of its citizens, even if it is not verbally committed to human rights. There are reasons why certain violations of human rights occur and, in the context of the Asian region, there seem to be fairly common political reasons for such violations.

This section will examine some of these political constraints which lead to violations of human rights characteristic of the region. These constraints are: 1) ethnic-cultural divisiveness and lack of social integration of different strata of an extremely hierarchically structured society which threaten national unity and security; 2) security problems arising from the bi-polar, and, later on, tri-polar, international conflicts and foreign interventions either by neighbouring countries or superpowers; and 3) recurring internal subversion.

These factors lead to the abuse of power or mismanagement of social conflicts, giving rise to infringements of various political and civil rights.

Table 1: Aid from the USA and Japan (millions of dollars)

	U.S. Military Aid		U.S. Economic Aid		Japanese economic aid ⁺	
	1979	1981	1979	1981	1978	1980
Bangladesh	0.2	0.1	207.5	152.1	119.62	606.97
Burma	0.0	0.0	4.8	7.6	104.02	152.46
China, Peoples Republic of	0.0	0.0	0.0	1.7	-	-
Fiji	0.0	0.0	0.0	0.0	-	-
India	0.5	0.0	228.3	275.1	41.17	41.00
Indonesia	34.8	32.2	191.3	130.0	227.57	350.03
Japan	0.0	0.0	0.0	0.0	-	-
Kampuchea	0.0	0.0	0.0	14.1	-	-
Korea, North	0.0	0.0	0.0	0.0	-	-
Korea, Rep.	238.4	162.7	41.0	27.6	66.13	76.30
Laos	0.0	0.0	1.9	0.0	0.52	0.52
Malaysia	8.0	10.3	2.5	1.7	48.00	65.53
Nepal	0.1	0.1	16.8	19.8	-	-
Papua New Guinea	0.0	0.0	0.0	0.2	-	-
Philippines	31.7	75.6	72.0	97.6	66.47	94.40
Singapore	0.0	0.0	0.0	0.0	-	-
Taiwan	0.0	0.0	4.8	7.6	104.02	152.46
Thailand	32.1	54.6	25.4	30.8	103.75	189.55
Vietnam	0.0	0.0	0.0	0.0	28.5	38.7

Sources: Country Reports on Human Rights Practices for 1981, Report submitted to the Committee on Foreign Affairs U.S. House of Representatives and the Committee on Foreign Relations U.S. Senate by the Department of State, 29 January 1982.

Japan's Economic Cooperation, Economic Cooperation Bureau, Ministry of Foreign Affairs, 5 October 1981.

†) Figures available for 1978 and 1980 only.

1. Minorities and social stratification in the process of national consolidation

After affirming in Article 1 that "all human beings are born free and equal in dignity and rights", the Universal Declaration of Human Rights enumerates those rights which, in general, are to be enjoyed by all without distinction of any kind, such as "race, colour, sex, language, religion, political or other opinion"¹.

The transformation of the old, ancestral communities of Asia into national states created new conditions for minorities of all kinds, as well as for different strata of society which used to be extremely hierarchically structured. Minority issues have become one of the crucial issues for national unity and social integration and of ineluctable concern for the State. Through national legislation and its implementation the State can destroy the existence of minorities. On the one hand, the State can strive to assure the rights of all individuals without distinction in the national community through protective measures for minorities or depressed strata.

In the case of disadvantaged social strata such a political will to protect is expressed in the Indian Constitution of 1946 which abolished "untouchability" and established the rights of all citizens, making special reference to the "weaker sections" of society². The Untouchability Offences Act, 1955 and the Protection of Civil Rights Act, 1976 forbids enforcement of any disability on the ground of untouchability against any person, and prescribes minimum punishment of imprisonment³. Difficulties of enforcement of such laws arise when the State is itself compelled to breach customary law defining the rights of individuals in traditional society, especially those related to property. The success of such measure depends also on the administrative structures which combine in practice the efficacy of law and political will.

In the case of minorities, political will to develop them is often overridden by the concerns of the State for national unity, national security, and economic development. The policy of promoting these objectives often leads the State to take measures against growth, identity and human values of ancient communities and minorities. The most acute form of such marginalization is alienation of these communities from ancestral land. Philippino ethnic cultural minorities⁴ and Mountain people in Taiwan have in the past been faced with such an experience. More recently, national economic development policy tended to force these communities to discard their traditional way of living, thus provoking political conflicts. For example, the opposition of a tribal population in the Chittagong Hill Tracts to the settlement of Bengalis in their area, a policy encouraged by the Bangladesh Government, resulted in violent confrontations between the Hill tribe and the Government. As a consequence, the Government introduced the Disturbed Areas Bill in the Jatiya Sangsad region, allowing arrest and detention of prisoners without trial⁵. The Kalingas in the Philippines are another example: their conflict with the government policy of modernization (dam construction) led to a similar political confrontation be-

tween the government and the minority group.

In fact, the existence of numerous ethnic and other minority communities and the frequent massive migration of peoples which have characterized the Asian continent since oldest times, proved to be one of the major threats to national unity and security, leading to an attitude of intolerance and denial of fundamental rights of these communities by certain states.

Migration or transportation of workers in the old, colonial times created minority situations, for example, of the Chinese in Indonesia and Malaysia, Tamils in Sri Lanka and Malaysia, and Koreans in Japan. The recent exodus of peoples from Indochina, either for economic reasons or for political persecution, added a new dimension to the traditional problems of minorities and migrants in Asia, revealing increasing political and economic limitations of the capacity of the Asian States to implement the rights of asylum seekers and freedom of movement enshrined in the Universal Declaration of Human Rights (Articles 13 and 14).

Migration and dislocation of peoples created, in fact, such acute political conflicts at the local level, that they even became sources for emergency measures. For example the Assam region in India was declared a Disturbed Area following the civil disobedience protests of the indigenous population against immigrant workers mainly of Bengali origin (5 April 1980): the re-activation of the Assam Disturbed Areas Act, 1955, and Armed Forces Special Powers Act, 1958, allowed army officers to "resort to firing, even causing death" to prevent a "breach of the peace" (Section 4)⁶.

In most countries of Asia, where human values are measured often by status and community origins, rather than by universal values of the individual, the fight for the rights of minorities and disabled strata of society tends to become war among communities, evoking collective myths and collective defence. Thus, it threatens overwhelmingly the already precarious security of nation states in the region. In addition, the total absence of regional agreements on migrations, nationalities and refugees makes inter-state co-operation extremely difficult.

Another subject of discrimination is the rights of women. In the popular beliefs and old traditions of Asia, whether in Confucianism, Hinduism, Buddhism, Shintoism, or Islam, women's inferior role is defined in the hierarchical categorisation of human beings, creating institutional female subordination⁷.

Various efforts to ensure women's rights have been made in many countries of Asia. In the People's Republic of China, women's participation in national life was particularly encouraged by various means. Article 53 of the Constitution of China guarantees:

"Women enjoy equal rights with men in all spheres of political, economic, cultural, social and family life. Men and women enjoy equal pay for equal work."

The Marriage Law in China reduced the power of the male members of the family by providing for monogamy, equal partnership in raising of children and altering patterns of inheritance and custody of children in favour of women.

The Agrarian Reform Law gave women the right to own property in their own name and the Labour Insurance Law allowed the equality of women workers with men workers. A campaign to criticize "remnants of Confucianism in society" was staged to protect women workers.

Despite all these efforts by the Government and the Party, even in a Socialist China dedicated to the idea of equality, such practices as traditional marriage⁸, less opportunity for women to have access to high income professions⁹, lower salaries for women, and seem to subsist, especially in the rural areas¹⁰.

2. Internal security

Articles 3, 5, 6, 7, 8, 9 and 10 of the Universal Declaration of Human Rights recognize fundamental liberties of the person related mainly to criminal procedures. Most of the Constitutions of the Asian countries guarantee these rights. In reality, however, the observance of these rights is seriously curtailed in most of these countries by the abuse of "special powers".

Special power can be described as the public law of necessity, as "necessity calls it forth, necessity justifies its existence, and necessity measures the extent and degree to which it may be employed"¹¹. It is also known as "emergency power" or "emergency government", "state of siege", "martial law" or crisis government, describing the state in which the executive is empowered to issue emergency legislation in the form of Ordinances and Regulations which need not conform to the provisions of the Constitution, including safeguards on fundamental liberties.

National legislations of this kind exist in most countries of Asia: Bangladesh (Emergency Powers Act 1975), India (National Security Act 1980), Indonesia (Anti-Subversion Act 1963), Republic of Korea (Anti-Communist Law and National Security Act), Malaysia (Internal Security Act 1960), Nepal (Public Security Act 1961), Pakistan (Martial Law Order No.12, 1980), the Philippines (Martial Law 1972, repealed in 1981), Singapore (Banishment Act 1959 and International Security Act 1963), Sri Lanka (Emergency Regulations 1979), Thailand (Martial Law Decree No.22 of the National Administrative Reform Council 1976).

Justified as powers to overcome crises, emergency powers are established on the ground of the needs of the time and considered as temporary. For example, in the case of Malaysia, the first Emergency was declared in 1948 to combat the military threat posed by the outlawed Malayan Communist Party. Although the first Emergency ended in 1960, there have since been three further proclamations, none of which have been legally terminated: 1964 to meet the threat of Indonesian "confrontation"; 1969 as a result of the 13th May incident with the Chinese minority; in 1977 in the face of political deadlock and civil unrest in the State of Kelantan. All but four of the 21 years of independence have been under legal Emergency.

In the case of South Korea, Martial Law was declared and some elements

of the Constitution were suspended in October 1972 on the ground that South Korea needed a sweeping political reform to carry on its dialogue with North Korea and to cope with the rapidly changing international situation, characterized by the withdrawal of the US troops from South Korea. "In order to foster and develop the free democratic institutions most suitable to Korea", the National Assembly was dissolved, the activities of all political parties banned and strict press censorship was imposed. In the meantime, "October Revitalizing Reforms" (Yushin Reforms) entailing a comprehensive constitutional overhaul were introduced and voted by an overwhelming majority at the national referendum. Subsequently, Martial Law was lifted in December 1972.

In the case of the Philippines, Martial Law was proclaimed in September 1972, citing evidence of an existing rebellion and affirming the intention to remove anarchy, maintain peace and order and to reform the country's institutions:

"... It is my intention beginning tomorrow to issue all the orders which would attain reforms in our society. This would include the proclamation of land reform all over the Philippines, the reorganization of the government, new rules and conduct for the civil service, the removal of corrupt and inefficient public officials and their replacement and the breaking up of criminal syndicalists."¹²

Whilst expeditious action based on swiftly-enacted laws can be regarded as justifiable, the fact that they are placed beyond effective scrutiny gives rise to the possibility of abuse and mismanagement. If, for one reason or another (security, constitutional reforms, economic development), emergency powers are installed irrevocably, it would be necessary to formulate the measure of checks and balance to defend the fundamental liberties of the individual even under the emergency.

The Bar Associations of India and Malaysia¹³ are particularly active in disseminating information on defense under emergency laws, situations of limitations on civil and political liberties and conditions of detention. More information is in fact needed on the history of the application of emergency powers, interpretation of conditions for use, possible controls by Parliament and courts for preventing the erosion of democracy, so that a better defense of fundamental liberties can be ensured under special powers.

A study of the factors leading to the abuse and misuse of emergency powers indicates that, in addition to internal or external insecurity, the traditional, submissive attitude of the people toward power, authority and law contributes to the acceptance of emergency rule¹⁴. For example, in North Korea, a sociological survey of legal values affirms that 61 per cent of the general public, 26 per cent of students and 28 per cent of legal professionals hold the opinion that "law is designed primarily to punish and to deal with those who have committed crimes"¹⁵. This attitude of deference and passivity vis-à-vis law is certainly not the source of emergency powers, but it facilitates nevertheless the extended application of law. Defense against expeditious and anticipated application of laws for security purposes¹⁶ becomes all the more important

because of this traditional authoritarian-submissive interpretation of law in Asia¹⁷.

It is wrong, however, to explain the Philippino people's support for Martial Law by this type of traditional attitude. A survey reports that the legitimacy granted to Martial Law depends on economic performance; policy output and administrative effectiveness. The parameters of effectiveness, foreign aid, for example, seem to be the key elements in neutralizing the opposition¹⁸.

3. Freedom of speech and freedom of expression

Article 19 of the Universal Declaration of Human Rights affirms that everyone has the right to freedom of opinion and expression. It seems that, in addition to political and military constraints, cultural forces are at work to determine the mode of implementation of this right in certain countries of Asia. It will be worth investigating how societies of consensus, where people are culturally obtuse to the Western type of individualism, define freedom of opinion and expression and what muted forms of constraint exist.

Insufficiency of inadequate data prevents us here from any affirmation. The case of the Indonesian Constitution might, however guide us to future research on the subject. The Constitution of Indonesia of 1954 provides in Article 28 for: "The right of free assemblage, the right to express one's opinion orally or in writing, etc. shall be provided by law". This means that freedom of expression is regulated by law. Moreover, the Preamble of the Constitution states that the State rests upon the five principles referred to as the Pancasila: belief in God Almighty, righteous and moral humanity, unity of Indonesia, and democracy and social justice under the guidance of the representatives' Congress.

Explicit and implicit constraints which could be places on freedom of expression are clearly indicated. A high government official responded thus to a journalist in September 1978:

"We have as a principle, democracy, and we are convinced that what we are doing right now is still democracy. Everybody will have the freedom to express things, to say things, to do things at the right time and the right place, as long as it is not against the law - and that is also our principle of democracy here... we do not call it liberal democracy, but we have a democracy based on our Pancasila called a 'Democracy Pancasila': everything should be done, not for the interest of a certain group, but for the majority and then everybody will benefit."¹⁹

More precisely, the Presidential Decree no.11 of 1963 on irradiating subversive activities contains *inter alia* the provisions that people will be convicted who "distort, undermine or deviate from the ideology of the Pancasila State or the broad policy lines of the State ... or disseminate feelings of hostility or arouse hostility, disturbances or anxiety among the population"²⁰.

The above national and international political conditions creating divisiveness of Asian countries seem to be the important factors determining the

implementation of human rights in Asia.

For the majority of Asians, however, it is not the problems of political detainees which really count in their everyday life. What really counts for them is how to feed their stomach and feed their children, and to live in dignity.

Asia, as everybody knows, is a continent of massive poverty consisting not merely of "poor" or "developing" countries but also of numerous "impoverishing" societies.

The following Table 2 shows different rates of annual growth between 1970 and 1980 in Asian countries.

Table 2: Annual Income per Capita and GNP Growth in Asian Countries, 1970-1980

	Annual income per capita (in US dollars)	Annual GNP growth 1970-80 (in %)
Afghanistan	230	3.6
Bangladesh	120	6.5
Burma	157	3.6
China	281	6.5
Hong Kong	2 720	8.5
India	230	3.5
Indonesia	439	7.5
Japan	8 887	6.4
North Korea	950	7.5
South Korea	1 553	8.7
Laos	89	2.0
Malaysia	1 763	8.0
Nepal	142	2.0
Pakistan	289	4.0
Philippines	732	6.2
Singapore	4 333	14.4
Sri Lanka	282	6.9
Taiwan	2 720	8.5
Thailand	708	7.0
Vietnam	290	3.0

Source: Far Eastern Economic Review Asia Yearbook 1982

The above table indicates clearly that some Asian countries are absolutely poor with stagnating growth rate, others are moderately poor with a moderate growth rate, and the rest is a group of countries with a spec-

tacular rate of growth, although not really rich due to the low income level at the initial stage (with the exception of Japan which looks more like stable industrialized countries of the West). As far as the human rights situation is concerned, however, these economic data are not revealing. They indicate only that: "only a few countries in Asia have both "bread" and "freedom"; many others have half a loaf with little freedom; still others have a precarious mix where "bread" is assured if certain freedoms are bartered; finally, a significant proportion of the countries have neither "bread" nor "freedom". It means merely that, while respect of human rights is not possible in absolutely poor, stagnant Asian countries, the correlation between economic indicators and human rights observance of a civil and political nature is less clear.

It is certain that if we are to judge Asian countries by the socio-economic rights affirmed in the Universal Declaration of Human Rights, many have no chance of conforming to Article 23 of the Universal Declaration which says: "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity". Further, the following Table 3 shows that most Asian countries do not respect Article 25 which states: "Everybody has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services". No Asian country, including Japan, has reached a level of daily calorie intake per capita comparable to the average among industrialized countries. What is even more striking is that few people in Asian countries have access to safe water and medical care.

In examining these socio-economic indicators, and in the attempt to relate them to human rights situations, we are bewildered by some contradictions: despite the profoundly serious nature of poverty in Asian countries, these data are in themselves sterile as a reflection of human rights in these conditions, as what really counts for human rights is not fulfillment of these physical needs, but freedom from fear of want, liberty and independence which allow everyone to determine what he wants.

If we are to be concerned only with meeting physical needs, we might advance arguments which are not very far from those who try to justify Martial Law: to increase the general level of living standards, national security, stability and economic development are necessary. Indeed, in South Korea, the annual GNP growth rate was 9.5 per cent between 1963 and 1972; 16.5 per cent in 1973; 8 per cent between 1974 and 1975. In the Philippines, 2.7 per cent between 1965 and 1973; and 9.8 per cent in 1973. Although they refer only to economic progress these data are not a bad argument for Martial Law.

The more essential question in examining human rights in socio-economic contexts is: why the poor are poor, and why they have neither bread for freedom. Poverty often is a consequence of deprivation of power, power to decide what one wants and to have the means to obtain it; it is a matter of one's control over and access to means of production including land and natural resources.

This brings us back to the question of civil and political rights, or rather to the indivisibility of human rights, as the power to decide what one wants and to have access to the means to get it depends on civil and political rights.

III. SUBJECTS FOR COMPARATIVE RESEARCH

From whatever angle we look at the problems of human rights in Asia, basic research will be fundamental to tender any international discussion meaningful, due to the human condition in different countries of Asia being incomparable. Furthermore, the widespread political instrumentalisation of the concept "human rights" is increasingly perverting and deforming the concept of human rights. In these conditions it will be necessary for everyone to rethink the fundamental meaning of human rights, so that discussion is possible without diverting into ideological polemics.

Only research work and the exchange of information about research results will help to eliminate empty ideological interpretation of human rights and bring us back to the real problems of the same. This will constitute also a basis for dialogue between different countries, organizations and individuals.

The following subjects could be suggested as examples of such comparative research on human rights in the Asian region:

First, the existence of rigid social hierarchies, determining social functions and roles of the individual, has many implications for the implementation of human rights. Human rights and, in particular, authority structures (family, religion, economic structure and political power) of each country should be examined, with a view to identifying what social and cultural factors are important in determining the context of human rights in Asia. This type of research will lead to a reflexion on the diversity of possible solutions to human rights problems in the mostly ancient, traditional societies of Asia.

Second, the Asian region being a continent of peoples' movements and international or non-international conflicts, producing refugees, stateless persons and migrants, research on nationality problems will be particularly important. Human rights of non-nationals (stateless persons, refugees, foreigners) should be examined comparatively.

Third, related also to the abundance of movements, divisions and armed conflicts in Asia, it might be useful to exploit humanitarian law more effectively, especially the Geneva Conventions of 1949 and their additional protocols. Attention should be drawn to certain provisions in situations of armed conflict that are not of an international character. For example, Article 3 of the Geneva Convention of 12 August 1949 stipulates:

"In the case of armed conflict not of an International character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

Table 3: Socio-economic Indicators of Asian Countries

	Adult Literacy Rate (%)	Life Ex- pectancy at Birth (Years)	Energy consumption per capita (kg. of coal eq)	GNP per capita (dollars)	Infant Mor- tality Rate (aged 0-1)
	1975	1978	1978	1978	1978
Indonesia	62	47	278	360	-
Thailand	84	61	327	490	68
Philippines	87	60	339	510	65
Malaysia	60	67	716	1 090	31
Bangladesh	26	47	43	90	139
Burma	67	53	64	150	-
People's Republic of China	-	70	805	230	-
Pakistan	21	52	172	230	-
Japan	99	76	3 825	7 280	10
Kampuchea	<u>36</u>	-	4	-	-
Dem. Rep. Korea	-	63	2 702	730	-
Rep. Korea	93	63	1 359	1 359	37
Lao PDR	<u>28</u>	42	60	90	-
Papua New Guinea	32	50	292	560	-
Vietnam	87	62	125	170	-
India	36	51	176	180	-
Nepal	19	43	11	120	-
Singapore	<u>75</u>	70	2 461	3 290	<u>12</u>
Sri Lanka	78	69	109	190	-
Industrialized Countries (Average)	99	74	7 060	8 070	13

Source: The World Bank, World Development Report, 1980, Tables in Annex (Washington D. C., August 1980) pp.110-155.

+) Figures underlined are for years other than those specified.

Child Death Rate (1-4 years)	Population per Physician	Percentage of Population with acces to safe water	Daily calorie supply per capita	Number enrolled in Secondary School as % of Age Group
1978	1977	1975	1977	1977
20	14 580	12	2 272	21
6	8 170	22	1 929	27
7	2 760	39	2 189	56
3	4 350	62	2 610	43
23	9 260	53	1 812	23
15	5 120	17	2 286	<u>22</u>
1	-	-	2 467	-
17	3 780	29	2 281	<u>17</u>
<u>1</u>	850	-	2 949	93
-	-	-	1 926	-
5	-	-	2 837	-
5	1 960	62	2 785	<u>88</u>
27	21 600	-	2 082	<u>14</u>
19	<u>11 800</u>	20	2 268	<u>12</u>
6	5 620	-	1 801	<u>51</u>
18	<u>3 620</u>	33	2 021	<u>28</u>
23	<u>35 210</u>	9	2 002	14
1	1 260	100	3 074	55
2	<u>6 270</u>	20	2 126	<u>47</u>
1	630	100	3 377	87

(I) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever, with respect to the above-mentioned persons:

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- b) taking of hostages;
- c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

Given the fact that almost all the Asian countries ratified this Convention, whereas very few ratified the international instruments concerning human rights, should not the ways and means of implementing this article be further explored, as a way of enhancing the respect for human rights?

Finally, the ways in which the concept of "human rights" is politically used both in international relations and internal politics should be analysed. Identification of sociological and political "clients" of human rights will also help understand how this concept functions in reality and with what vested interests. We have learned from past experiences with human rights that self-criticism is essential for keeping the concept of human rights credible and apart from the arrogance of power.

Notes:

- 1) The UDHR makes no specific reference to minority rights as such. A sub-commission for the protection of minorities of the UN Commission of Human Rights had to deal with the protection of minorities and ultimately this protection came to be incorporated in Article 27 of the International Covenant on Civil and Political Rights.
- 2) Article 17 of the Indian Constitution reads: "'Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law."
- 3) See, for example, Baxi, Upendra, "Untouchability: Constitution, Law, and

- Plan - an examination of some socio-legal aspects", paper presented at the Seminar on "Removal of Untouchability", New Delhi, 1979. The Indian Law Institute, Minorities and The Law, New Delhi, 1972.
- 4) There are at least seventy distinct minority peoples in the Philippines numbering at least four million and forming about 12 % of the total population. About 3 million of these are Muslims in the south. The Igorots of northern Luzon (including Kalingas and Bontoe form the next largest minority group numbering about half a million. While the Muslims and Igorots have developed complex and extensive political organisations and have become acculturated to the technique of wet rice cultivation, the cultural minorities have, in general, remained mainly shifting cultivators or hunters and gatherers. See Urban Rural Mission-Christian Conference of Asia, *No Place in the Inn: Voices of Minority Peoples in Asia*, Tokyo, 1979.
 - 5) An area in south-eastern Bangladesh. Many of the tribes are Buddhists or Christians. Amnesty International Report 1981, pp.201-204.
 - 6) *Ibid.* p.215.
 - 7) For example, both in Confucianism and Hindu tradition (Manu), it is a rule that: "Before marriage, obey your father. After marriage obey your husband. After your husband dies, obey your son." Kelbar, Govind, "Comparative Analysis of Indian and Chinese experiences of Institutionalization of Popular Participation in Development (in particular for women): Approaches and Politics, Methods and Institutions functioning Processes and Results", Unesco, Division for the Study of Development, PAR.21 E.1979.
 - 8) Roux, Alain, *Le casse-tête chinois: trente ans de Chine socialiste vus par un communiste français*, Paris, Editions sociales, 1980, p.382.
 - 9) Roux, Alain, "La place du monde ouvrier dans le développement chinois" *Revue Tiers Monde*, t.XXII, no.86, April-June 1981.
 - 10) Kelbar, *ibid.*
 - 11) Weiner, F.B., *A Practical Manual of Martial Law*, 16, 1940.
 - 12) President Marcos speech on the day of the Proclamation of Martial Law, on radio and television, 22 September 1972.
 - 13) The activities of the Bar and lawyers in Malaysia for the defense under emergency laws are less known to the general public. See, for example, *Conditions of Detention of Persons Held under the Internal Security Act, 1960* (Memorandum to the Government by the Bar Council, 1979). Kumaraswamy, P., "Essential (Security Cases) Regulations 1975: Is the Rule of Law in Jeopardy?"; *Malaysian Law Journal*, jurisprudence Karam Singh v. Menteri Hal Ehwal Dalam Negeri (April 25, 1969, Federal Court Criminal Appeal no.X26 of 1968), Anthony Gomez v. Ketua Polis Daerah Kuantan (March 15, 1977, Federal Court Criminal Appeal No.32 of 1976), Sivasubramanian v. Chong Cheong Wah and Anor (December 13, 1972, Civil suit no.114 of 1970).
 - 14) Feliciano, Myrna, "The Pattern of Emergency Power Rule in South Korea and the Philippines", University of the Philippines, Law Center, 1979.

- 15) Hahm, P.C. and Yang, S.D., The Attitude of the Korean People Toward Law, in: Legal System of Korea (145-201) Korean Culture Series 5, 1975.
- 16) As one of the examples of such a defense, see Daud bin Salleh v. The Superintendent, Sembawang Drug Rehabilitation Centre (High Court of Singapore Judgement No. 47, 1980).
- 17) See also Nihon Jin no Ho Ishiki (Legal consciousness of Japan).
- 18) On the question of attitudes toward law, José Diokno, a former Senator of the Philippines, on the contrary, illustrates the traditional democratic character of the Philippino people in his paper The Philippino Concept of Justice, presented at the Seminar on Human Rights and Legal Aid, held at the University of the Philippines Law Center in 1981.
- 19) Interview given to Aag van den Henvel by General Jago Sugama, then Chief of Staff of Kopkamtib (Command for the restoration of Peace and Order) and also head of Bakin (State Intelligence Organisation). Tapol Bulletin no. 31, January 1978/9, p. 9.
- 20) Indonesia: an Amnesty International Report, 1977, p. 124.



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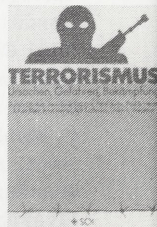
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