

2010

# Human Rights in Asia

## One Day Conference


University of Essex
HUMAN RIGHTS CENTRE



人权 NHÂN QUYỀN HAK ASASI MANUSIA  
**HUMAN RIGHTS IN ASIA**  
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 मानवाधिकार  
 人權  
 六月七日  
**JUNE 7th 2010**  
 ROOM 4SB.5.3  
 10:00 to 17:15hrs  
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PROGRAMME

**10:00 - 10:10** Opening Remarks by Professor John Packer (Director of the Human Rights Centre)

**10:10 - 11:00** Human Rights in Asia: the Best of Times, the Worst of Times  
Mr. Paul Green (Alumnus LLM 2004, Human Rights Adviser, UK Foreign and Commonwealth Office)

**11:10 - 12:00** Arab Charter on Human Rights: Problems and Prospects  
Ms. Mervat Rishmawi (Alumna LLM 1994, Human Rights Consultant, previously Legal Advisor to Amnesty International)

**12:45 - 14:20** Development and Human Rights  
Climate Change and Human Rights  
International Trade and the Right to Access to Medicine: Experience from Thailand and India  
Principle and Practice of Japanese ODA  
Asian Development Bank and Human Rights

**14:40 - 16:00** Democracy and Human Rights  
Democracy in Burma? Upcoming Elections and Life as a Refugee  
Human Rights Issues in Peace Building Process in Nepal  
Against Impunity! Accountability for Human Rights Violations Committed During the Indonesian Occupation of Timor-Leste (1974-1999)

**16:10 - 17:00** 'Human Rights' in Japan: the Discourse of Buraku Liberation from the 1920s to the 1990s  
Professor Ian Neary (Professor of the Politics of Japan at Oxford University, Fellow of the Essex University Human Rights Centre)


MONDAY JUNE 7th 2010 / ROOM 4SB.5.3 / information at [YMARUT@ESSEX.AC.UK](mailto:YMARUT@ESSEX.AC.UK)

The Organizing Committee on Human Rights in Asia  
University of Essex





## “Human Rights in Asia” Conference Report

### Foreword

On 7<sup>th</sup> June 2010, the combined efforts of the organising committee – comprising students of human rights from the University of Essex who share a common interest or work experience concerned with human rights in Asia – reached fruition in a one-day conference titled “Human Rights in Asia”.\*

The conference addressed five themes: Human Rights in Asia: the Best of Times, the Worst of Times; The Arab Charter on Human Rights: Problems and Prospects; Development and Human Rights; Democracy and Human Rights; and ‘Human Rights’ in Japan: the Discourse of Buraku Liberation from the 1920s to the 1990s.

Asia accounts for over half the world’s population with a tremendous culture diversity and has severe violations such as poverty and conflicts, and so studying and improving the knowledge of the situation and challenges relating to human rights in Asia is indispensable and valuable not only for a better future for the region of Asia but also for the world. In this sense, we hope that this conference has helped to enrich the educational environment at Essex.

\*The organising committee recognises and appreciates the warm support of Professors Kevin Boyle and John Packer, and the financial support of the Human Rights Centre and the School of Law.



## **Human Rights in Asia: the Best of Times, the Worst of Times**

Chair: *Professor John Packer (Alumnus LLM '87, and Director of the Human Rights Centre)*

Speaker: *Mr Paul Green (Alumnus LLM '04, Human Rights Adviser, UK Foreign and Commonwealth Office)*



In his opening remarks, Mr. Paul Green delivered a question of whether the best of times or the worst of times in Asia. He observed that the economic backwardness of Asia has been used to establish the primacy of economic development over human rights. The argument is, in part, that civil and political rights are neither meaningful nor feasible in conditions of want or poverty. Therefore, the first priority of State policy must be to promote economic development. This implies that economic development may require restrictions on human rights, both to provide a secure political framework in which it can be pursued and to remove obstacles in its way. However, the economic growth in Asia today (e.g., China is now the second largest economy in the world) does not provide a solution to the problem of social inequality. Indeed, great disparities of wealth are readily apparent as is tremendous poverty in the region.

Asian cultures are distinct and their values offer their own space for human rights. The 'Asian values' debate in the early 1990s was largely a political narrative. Asian values have been used to challenge the ICCPR that is believed to reflect a western concept. Today, most countries in the region violate basic civil and political freedoms, and impunity for on-going human rights violations continues.

Although there are many challenges for realising human rights in Asia, there is arguably reason for optimism over the longer term. Optimism towards the realisation of human rights is supported by the fact that the majority of the countries in the region have included international human rights values in their national Constitutions, and most of the countries have ratified international human rights conventions. Moreover, the Courts and NGOs are actively working on human rights cases; e.g., in Thailand there are a few cases regarding *habeas corpus*. The international community driven by the United Nations has actively encouraged the member States in the region to respect, protect and fulfil human rights. These efforts include: the establishment of National Human Rights Institutions; the inclusion of human rights in the education systems; and inclusion of human rights in national implementation strategies. The challenge remains for these efforts to translate into concrete improvements in the enjoyment of human rights in Asia.

## **The Arab Charter on Human Rights: Problems and Prospects**

Chair: *Dr Yousef Farah (School of Law)*

Speaker: *Ms Mervat Rishmawi (Alumna LLM '94, Human Rights Consultant, Fellow of the Essex HRC, and former Legal Advisor to Amnesty International)*



The second session of the conference was dedicated to human rights in the Middle East with an emphasis on the Arab Charter on Human Rights. Mervat Rishmawi, former Legal Advisor for the Middle East and North Africa at the International Secretariat of Amnesty International, offered a detailed presentation. She reviewed the significant political developments that

impacted the adoption of the Charter, which began with the founding of the League of Arab States in 1944, followed by creation of the Arab Commission on Human Rights in 1968, then the adoption of the first Arab Charter in 1994 culminating with the adoption of the revised Arab Charter in 2004 and the formation of the Arab Committee on Human Rights and the Arab Sub-Commission on Human Rights in 2008 and 2007, respectively.

Ms Rishmawi clearly elaborated the circumstances under which the Arab Charter was adopted. The role of individual experts in the field of human rights was significant during the drafting process and resulted in a tabling of a progressive draft document. The Charter that was ultimately adopted was indicative more of States parties' political clout in the region and so it was modified to ensure compatibility with their domestic law and practices. Some modifications to the adopted Charter included (to name a few): failure to recognise that the detention of the child be a last resort; prohibition of torture, and of cruel and inhuman treatment... but not punishment; failure to prohibit the use of statements extracted under torture or cruel, inhumane or degrading treatment or punishment – to use these in proceedings against the person; and there is exclusion from periodic elections which shall be by universal and equal suffrage exercised by secret ballot. At the same time, Ms Rishmawi acknowledged a few positive aspects of the Charter such as Article 1 identifying the objectives of the Charter to be to place human rights at the centre of the key national concerns of the Arab States, and affirming that “all human rights are universal, indivisible, interdependent and interrelated”. However, Ms Rishmawi's concerns about the Charter outweighed the positive factors that she noted.

The presentation touched on the method of implementation of the Charter through a reporting process to the Arab Committee on Human Rights which is mandated to include general comments and conclusions and recommendations, but no clear obligation to issue concluding observations. Ms Rishmawi summed up her presentation by emphasizing that the changes made by States to the Charter made it a much weaker instrument than the draft that was originally presented by the Committee of Experts and effectively making it inconsistent with human rights law. Nonetheless, Ms Rishmawi credits the process of drafting, which was the first time in which the League of Arab States demonstrated relative openness to benefit from expertise outside the League. Finally, she concluded by acknowledging that in the future the Charter itself may be used as an important tool to counter the gaps and failings that appear within.

## **Development and Human Rights**

Chair: *Dr Eunna Lee (PhD in Sociology at Essex University)*

*Ashirbani Dutta: Assessing the Inter-Relationship between Climate Change Impacts and Human Rights Violations: Using Displacement as an Example*

*Joo-Young Lee: International Trade and the Right to Access to Medicine: Experiences from Thailand and India*

*Chika Masui: Principle and Practice of Japanese ODA*

*Dr Sanae Fujita: The Asian Development Bank and Human Rights*



The session on Development and Human Rights covered diverse issues of significance in the Asian context. With a brief introductory address from the Chairperson, the session started with the first speaker covering the challenges of 'assessing the inter-relationship between climate change impacts and human rights violations: using displacement as an example'. After an overview on the distribution of the climatic impact, the discussion mainly focussed on how impacts of climate change are actually experienced by the community, using vulnerability as an indicator. The purpose was to analyse how to draw the scope of the impacts on the affected community. The net outcome on the population is the sum of various inter-dependent factors. Using displacement as an example of the cause and consequence of developmental deficits, the discussion highlighted that it is impossible to analyse at which point the displacement is purely climate-change induced.

The second speaker covered the issue of 'International trade and the Right to Access to Medicines: Experiences from Thailand and India'. The discussion started with the concerns arising from the Agreement on Trade Related Aspects of Intellectual Property (TRIPS) on access to medicines, which is a significant component of the rights to life and health. But intellectual property impacts this right by way of strengthening the right of the intellectual property holders, eliminating competition through high pricing and other practices. Experiences from countries like Thailand and India show the possible way out by reconciling intellectual property and human rights to access medicines in the implementation of TRIPS Agreements. The exemplary measures gathered from country-based examples are strict standards of patentability like public health safeguards, the practice of compulsory licensing for access to generic medicines for governments to use, along with constitutional guarantees on access to health care. In the end, safeguarding the right to access essential medicines at the domestic level is largely dependent upon political will including upholding of constitutional obligations.

Drawing experiences from Japan, the third speaker discussed the 'Principles and Practices of Japanese Official Development Assistance (ODA)' based on the practices of the Japan International Cooperation Agency (JICA). Since the amendment of the ODA Charter in 2003, 'human security' has been incorporated into programmes and aid, strengthening the approach to development by safeguarding people's freedom from fear and want. This has been elaborated by examining four ways of integration along with case-study examples. The strategies comprise of comprehensive targeting of both fear and deprivation: by focussing on medium and long-term development and risk management; identifying socially vulnerable groups and adapting cross-sector approach to address their issues; establishing mechanisms to protect and empower people through capacity-building and encouraging interaction; and, lastly, addressing issues involving global risks like climate change. While they bear similarity with the rights-based approach, the latter can still guide to the areas of future improvement by encouraging participatory processes of monitoring, evaluation and identification of vulnerable groups, enhancing self-accountability and strengthening extra-territorial obligation.

The session concluded with the final speaker addressing issues arising from the work of the 'Asian Development Bank (ADB) and Human Rights'. As an important actor in the field of development in Asia and the Pacific, the ADB has significant influence on the lives of people and their human rights. Its membership is broad, including from beyond Asia. But only a few countries have substantial influence over the decisions of the Board, the most prominent being Japan and the USA. In spite of its prominence, the Bank's shameful ignorance towards human rights is evident in its Charter highlighting non-interference in the political affairs of the member States. Confining its decisions to matters involving economic considerations, it remains silent on human rights issues. The Bank also faces operational challenges like internal resistance with respect to compliance and monitoring of its projects, problems of implementing its regulations, poor or absent dialogue or stakeholder involvement. Recently, it has also increasingly become involved in energy efficiency projects concentrating more on efforts to mitigate climate change. However, involvement in the adaptation strategies has been ignored. In a nutshell, 'human rights' in Asia is still evolving in issues related to development.

## **Democracy and Human Rights**

Chair: *Dr Andrew Fagan (Deputy Director of the Human Rights Centre)*



### **Democracy in Burma? Upcoming Elections and Life as a Refugee**

*Ayano Kikuchi and Claire Simmons* talked on situation of democracy and the fate of refugees in Burma. To begin, Ayano recounted the general political background of Burma and discussed the implications of the upcoming general election scheduled for late 2010. She revealed many anti-democratic elements in this process despite the official claims from the military junta regarding the proposed constitutional referendum and democratic process in Burma. Ayano highlighted the vital importance of the international community in maintaining vigilance and insisting on the re-establishment of the democratic process with the protection and promotion of human rights in Burma. Claire based her talk on the causes and consequences of internal displacement and refugees in Burma. The Government's actions have caused thousands of people to be displaced, and refugees fleeing the country are a mix of political dissidents and victims of ethnic oppression. The situations of refugees and IDPs are deteriorating and comprise a series of human rights violations. UNHCR and the international community in general must pay attention to the fates of those people and pressure Burma to fulfil its human rights obligations.

### **Human Rights Issues in the Peace Building Process in Nepal:**

Building Democracy, Combating Impunity and Strengthening Human Rights

*Nahakul Subedi and Rishi Robertson* discussed key challenges and concerns in establishing a stable democracy in Nepal. The presentation was divided in two parts: Democracy and the peace process; and Accountability for past human rights abuses. The first part summarized the significant political and social developments in Nepal over the past 20 years in which the country witnessed a decade long armed conflict and eventually a formal peace accord that lead to elections and a fresh start to democracy building. They emphasized the importance of ensuring a transition to a stable democracy to ensure lasting peace. In the second part of the presentation, the speakers emphasized the opportunities that Nepal has had during the peace negotiations and the major shortcomings of the State in dealing with past human rights violations. They emphasized the need to duly address these issues to ensure accountability for acts of both State and non-State actors. Without systematically addressing past violations, it was argued, Nepal will continue to face major challenges bringing the peace process to a conclusion.

### **Timor-Leste Against Impunity! Accountability for Human Rights Violations Committed During the Indonesian Occupation of Timor-Leste (1975-1999)**

*Benícia Eriana Magno* discussed on the circle of impunity for human rights violations during the Indonesian occupation of Timor-Leste (1975-1999). Despite grave and systematic human rights violations committed by members of the Indonesian security forces, the vast majority of perpetrators have not been brought to justice. Benecia considered that a major cause of impunity is the Government's policy to prioritise the promotion of friendly ties with Indonesia and the consequent claim that pursuit of justice counter-productive in achieving this aim. The Timorese Government is thus making a trade-off between justice and stability and security of the nation. It considers the trial of any Indonesian officer for past crimes as a threat to national stability. Although "the Joint Indonesian/Timor-Leste Truth and Friendship Commission" has recommended investigation, prosecution and punishment of those perpetrators who are responsible for gross human rights violations such as crimes against humanity, no actions have yet been taken. However, the civil institutions of Timor-Leste can only gain popular trust when action will be taken to realise those recommendations. There is a real need for civil society and the international community to generate pressure which will

create an environment in Timor-Leste and Indonesia conducive to bringing the perpetrators to justice. Such developments are essential for establishing peace, the rule of law, justice, and the promotion of democracy in post war Timor-Leste.

**'Human Rights' in Japan: the Discourse of Buraku Liberation from the 1920s to the 1990s**

Chair: *Professor Françoise Hampson*  
(*School of Law and Essex HRC*)

Speaker: *Professor Ian Neary* (*Professor of the Politics of Japan at Oxford University, Fellow of the Essex University Human Rights Centre*)



Professor Neary explored what ‘Human Rights’ has meant in Japanese society over a hundred years, surveying the Buraku issue in Japan. The Buraku is a Japanese minority group who are believed to be descendants of social outcast communities from the feudal age, and who have suffered continuous discrimination. Professor Neary’s presentation was built around his research on the figure of Matsumoto Jiichiro, the leader of the Buraku liberation movement from the 1920s to 1950s, and also the policy process addressing the Buraku question following World War II through the Cold War.

Although it is often said that human rights in Japan was brought by Western countries in the 20<sup>th</sup> Century, the idea of rights in general and human rights in particular was not completely alien to Japan before that period. In fact, the 1889 Constitution evokes the idea of human rights, and the campaigns led by Suiheisha (the nationwide organization on the Buraku issue) driven by Matsumoto Jiichiro during the 1920s and 1930s introduced the idea of ‘Jinken’ (human rights) into the social movement for Buraku liberation.

Professor Neary traced the gradual spread of the human rights idea after World War II. The new Constitution was drafted in 1947 and further developed the political, social and economic rights which had been guaranteed in the 1889 Constitution. In addition, the Ministry of Justice in Japan established a civil liberties commission which encouraged circulation of human rights ideas and action against human rights violations. In this way, during the 1950s, a human rights supporting system was developed. Matsumoto Jiichiro took part in the activities of developing this system through some financial support and, moreover, he demanded that the Ministry of Justice should reform the civil liberties commission system to make it more independent from the Government and better able to criticise the Government, and to encourage people to protest against human rights violations.

However, after 1950s, Professor Neary noted that the human rights movement shrunk in the new environment of the Cold War. One consequence was that Matsumoto became more interested in creating a broader peace movement than a human rights movement. Another consequence was that the Japanese Government became less interested in human rights promotion and protection under the pressures of the Cold War.

It was not until the 1990s, and the end of the Cold War, that a human rights movement including the Buraku liberation movement re-emerged in Japanese society. As a consequence, greater attention has been paid to human rights standards as set out mainly in United Nations instruments and documents. The Buraku liberation movement activists refocused on more human rights ideas and anti-discrimination, and the Japanese Government also started to pay attention to human rights issues particularly through ratification of international human rights conventions against torture and racial discrimination. Human rights research institutes were also created, particularly in Osaka and Kyoto.

In the 21<sup>st</sup> Century, Professor Neary concluded, human rights ideas have re-emerged in Japanese society. The Government of Japan has begun to address human rights issues

again, including those discussed in the 1950s such as regards reform and improvement of the domestic human rights system. But many issues remain unresolved and one theme for further debate is the continuing influence of culture (in this case, Japanese culture) on how human rights are weighed and pursued by society and by the government.

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### **The Organising Committee**



Chika Masui, Joo-Young Lee, Balqis Abdulkadir Mohamad,  
Ayano Kikuchi, Rishi Robertson, Claire Simmons, Sanjeev Thavarajah, Nahakul Subedi, Yoko Maruta  
Ashirbani Dutta, Dr. Sanae Fujita, Eunna Lee, Koichiro Takahashi and Benicia E Xavier Dos Reis Magno

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