The Asia-Pacific Human Rights Information Center or HURIGHTS OSAKA, inspired by the Charter of the United Nations and the Universal Declaration of Human Rights, formally opened in December 1994. HURIGHTS OSAKA has the following aims: 1) to engender popular understanding in Osaka of the international human rights standards; 2) to support international exchange between Osaka and countries in Asia-Pacific through collection and dissemination of information and materials on human rights; and 3) to promote human rights in Asia-Pacific in cooperation with national and regional institutions and civil society organizations as well as the United Nations.
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Foreword

There seems to be no limit to the number and type of initiatives that come to our knowledge regarding human rights education in Asia and the Pacific. We continue to stumble upon, year after year, initiatives that have significant role in addressing particular issues in different parts of the region.

As much as would like to document human rights education experiences, we also would like to see active use of these experiences by as many people as possible in different contexts and through varied educational initiatives.

We are therefore delighted to bring these initiatives to the attention of people who have interest in human rights education. We would like these initiatives to inspire people outside the institutional networks, coalitions, alliances and partnerships where these initiatives respectively belong. We deliberately try through this publication to make people within and outside these “enclosures” to communicate, share ideas and materials, and even undertake joint projects together.

As in the previous years, we have another very interesting collection of experiences from a wide variety of institutions and practitioners. We are honored to have their experiences become part of our collection of information on human rights education.

We thank the individuals and institutions that accepted our invitation to be part of the third volume of this publication.

We also wish them well in their endeavor to make a difference in their respective fields through human rights education.

Osamu Shiraishi
Director
HURIGHTS OSAKA
Introduction

The “promotion” aspect of human rights work refers to a variety of programs and activities that range from explicitly human rights promotion types to those that appear to be hardly indicating any link to human rights. In many of the latter cases, human rights are “embedded” in the activities and discussed as one of the components of the problems involved.

While effective conveyance of human rights message must always be considered, explicit exposition of human rights is not necessarily the only way to attain this goal. In a number of situations, strong and open projection of human rights encounters difficulties and to some extent blunts the desired impact of the initiatives.

Within the wide field of human rights promotion, human rights education forms a very significant part.

The current volume presents a range of human rights education experiences that highlight the need and the dynamics involved in making them work on the ground. These experiences exemplify explicit exposition of human rights but also the “human-rights-embedded” approach.

The current collection of articles also covers a wide range of human rights education programs catering to judges and prosecutors, journalists, students (from basic education level to tertiary and higher levels) and also human rights workers (or people who are being trained to assume human rights-related work particularly the government officials).

These articles discuss the challenges in introducing human rights education in the formal, non-formal and informal education systems, the context of the people and institutions that should be affected, and the ways to link human rights to cultures (including religions).

Educating the Judges and Prosecutors

Experiences from Nepal and the Philippines provide concrete examples on how human rights can be taught to judges and prosecutors as part of their pre- and in-service training requirements. Both experiences point to the importance of discussing human rights in relation to specific issues. The National Judicial Academy of Nepal takes up gender justice, social justice, juvenile justice, transitional justice, human trafficking, and torture as issues for its human rights-related training activities. The Philippine Judicial
Academy focuses on issues about women, children, environment, sharia law, human trafficking, and also extrajudicial killing and enforced disappearance.

Being judicial academies, they facilitate understanding of state obligations under ratified international human rights instruments, the domestic laws affecting human rights issues, jurisprudence and human rights, and the human rights implications on court procedures. Their programs provide judges and prosecutors the opportunity to see domestic laws and issues from a human rights perspective.

They also see the need for research and publication as essential components of the education programs. Judges, prosecutors and lawyers need practical materials that can guide the application of human rights in their respective areas of work, as much as in-depth discussions on human rights law and jurisprudence.

But they face the challenge of making the human rights courses become significant part of the mainstream course, instead of special activities. They also need to hold an assessment of the impact of the human rights education activities on the decisions of the judges on cases brought before them.

**Educating the Human Rights Workers**

The Ethics and Human Rights in Counter-trafficking initiative of the United Nations Inter-agency Project on Human Trafficking (UNIAP) illustrates the need to constantly find areas where human rights education has to be undertaken. In this UNIAP initiative, the major concern is on the manner by which services are provided to address human trafficking issues. There is certainly no guarantee that people who consider themselves human rights workers or defenders would act in ways that would not be violating the very rights they uphold. Good intentions are not enough. And it cannot be assumed that existing governmental services and programs adhere to human rights principles. The UNIAP project highlights the problems encountered by measures aimed at helping human trafficking victims that cause human rights violations (such as violation of the right to privacy, freedom of movement, and more seriously the retraumatization of the human trafficking victims) instead. The initiative provides principles on human rights and ethics that should guide the development and implementation of programs and research projects.
These guiding principles constitute the core messages of the initiative, and are translated into checklists, case studies, do's and don'ts, and templates for key forms such as ethics reviews and informed consent statements. The *Guide to Ethics and Human Rights in Counter-trafficking—Ethical Standards for Counter-Trafficking Research and Programming,* is the basic material for training government officials, members of the police, journalists, social workers and policymakers in the Greater Mekong Subregion.

The initiative implements an agreement among the countries in the Greater Mekong Subregion under the Coordinated Mekong Ministerial Initiative Against Human Trafficking (COMM Process). The intergovernmental agreement commits the respective governments of the countries involved to “ensure that all official actions with respect to trafficked persons protect their safety, dignity and rights.”

The initiative highlights this intergovernmental commitment along with the different relevant domestic laws.

**Educating the Journalists**

The media has long been considered influential in promoting human rights, but also responsible for creating misconceptions about human rights and for violating them. Thus there is clear need for media people to have proper understanding of human rights and preparation to apply them in their work.

The experience of Drik Library is an example of training for journalists on how they can be guided by human rights principles in presenting people's situations and problems to the public. Drik Library wants to mobilize the journalists into exposing human rights issues and violations in the proper way. The Drik Library training provides journalists with the venue for learning human rights concepts, affected peoples or groups and their issues, and the human-rights-sensitive manner of reporting them to the general public. The training program is oriented toward practical application of human rights principles in the field of journalism.

Drik Library holds the training in line with its advocacy on the role of the media in promoting social justice in general, and “human rights journalism” in particular.

Indeed, human rights-guided journalism/media should constitute an essential pillar of the human rights structure in any country.
Human Rights Education in Formal Education

The experience of Muhammadiyah secondary schools in Indonesia provides an important reminder about the challenges in the teaching and learning of human rights in the formal education system. It tells of the need for a clear commitment to the idea of human rights among education officials in order to integrate human rights education into the school system. The debate on the idea of human rights in relation to Islam and the development of the school curriculum to integrate human rights education in Muhammadiyah schools are not merely interesting but also very essential. Proper appreciation and implementation of any human rights education program within the school system require such internal debate to ensure its acceptance by people who make policy decisions and manage the daily operations of schools.

The Muhammadiyah schools experience is also notable for having human rights textbooks that discuss the links between human rights and Islam. A similar process of debate and discussion must have contributed to the acceptance of a textbook on Khmer Rouge history by the Cambodian Ministry of Education, Youth and Sport. The textbook is meant to make the present young generation of Cambodians gain a better understanding of a recent past that is slowly being forgotten. The textbook is designed for classroom use, and supplemented by teacher’s guidebook and students’ workbook. The textbook has been used also in teacher training.

But as in any initiative introduced into the school system by institutions outside the education bureaucracy, the use of these materials inside the classroom deserves a proper monitoring as well as support. The assessment by the Documentation Center for Cambodia (DC-Cam) of its project is an example of such monitoring. The experience highlights how a project on the teaching of a particular segment of history can potentially lead to problems without such monitoring. The proponent institution (DC-Cam) has to find out how the people within and around the schools view the project. Do the education officials, school officials, teachers and parents share similar perspective about the teaching and learning of the Khmer Rouge history? Are they (school officials and teachers especially) properly prepared (trained) to undertake the task? Do teachers have the necessary teaching materials (history textbook, teacher’s guidebook) for the purpose? Considering the official curricular requirements in teaching history and other relevant subjects, do teachers have the desire to incorporate the teaching of Khmer Rouge
history within their respective subjects? For some teachers who are former Khmer Rouge cadres, are they willing to discuss the Khmer Rouge atrocities and people’s suffering (both human rights violations) whose veracity they can personally attest to?

Are the parents who are former Khmer Rouge cadres supportive of the idea of teaching Khmer Rouge history to their children?

Fortunately, to some extent, the DC-Cam assessment of its project reveals support for the project among education and school officials, teachers and parents in two provinces with majority population consisting of former Khmer Rouge cadres.

At higher educational level, particularly the law school level, how can human rights be taught or learned? One answer is through the establishment of a program that complements classroom teaching. Such program should facilitate students’ transformation of concepts into practice. The development and implementation of this type of program is the focus of the Bridges Across Borders Southeast Asia Community Legal Education Initiative (BABSEA CLE). The significance of the program lies in the fact that it brings the educational institution (particularly the faculty of law or law school) to the community where it should draw knowledge from on how to apply legal (including human rights) concepts.

The promotion of clinical legal education in Southeast Asia by BABSEA CLE is important for human rights education. It addresses the component of pedagogy, particularly the one that brings learning within the context of the community. BABSEA CLE defines clinical legal education as a type of experiential problem-based learning. Such learning system is a need in human rights education, which should ensure that human rights do not remain mere ideas but put into practice in a most educative sense. Any legal education should be touching on human rights-related principles, if not the human rights laws and international instruments themselves, whenever applicable.

**Participatory Teaching and Learning**

The experiences of the institutions featured here highlight the employment of participatory learning for all types of students as well as for adult professionals. In the same manner, these experiences show that effective teaching is almost always linked to the employment of participatory teaching.
They all value the importance and effectiveness of such type of teaching and learning in whatever form of human rights education.

Most of the experiences featured here justify the employment of participatory teaching and learning. The justification is expressed in a variety of ways:

- It is supportive of faculty program objective of developing better trained and more socially conscious lawyers;
- It is in line with teacher training on the use of K-W-L (What I Know, What I Want to Know, and What I Learned) chart and group discussion;
- It is the best hope for securing active longtime involvement of participants in human rights work;
- It enables educators, facilitators and presenters to deliver their sessions more effectively;
- It is part of trailblazing efforts in the training of the judges and court officials;
- It supports the view that the more participatory the learning process is the more benefit the participants obtain from the training;
- It facilitates the development of enthusiasm among students in thinking and finding solutions to problems.

There can really be many justifications for employing participatory teaching and learning, and hardly any argument against them.

Teaching and Learning Materials

The need for teaching and learning materials in any form of human rights education program or activity comes out strongly in the experiences featured here.

These materials range from textbooks and lesson plans for schools to different types of materials for the general public. They include materials meant for training of particular groups of people working on specific issues as well as materials on general human rights principles and mechanisms.

Indeed, any human rights education program or activity must have the necessary materials that would provide appropriate human rights information and messages.
About Culture and Human Rights

Equally apparent in the experiences featured here is the question of acceptability of the idea of human rights.

The survey undertaken in Bangladesh and the various studies of Timorese culture support the view that people have an understanding of human rights (though known by different names or couched as issues ordinarily faced by people) and of the means to resolve problems. But there is still a need to make such understanding much more legitimate and proper by pointing out what human rights really mean according to international standards and in relation to local systems, knowledge and cultures.

Examining cultures, local systems and history in ways that bring out the links between them and human rights is important in this regard. Human rights must be seen as legitimate part of the social, legal and cultural fabrics of society.

While there are points of conflict of ideas or concepts between the internationally-agreed definition of human rights and the local systems, knowledge and cultures, there are also points of convergence between them. It is the responsibility of the human rights educator to bring to discussion and understanding both aspects with the goal of making people continue their support for human rights while finding ways of dealing with points of conflict.

The survey of public view on human rights in Bangladesh, the literature review of studies on Timor Leste’s informal local justice systems, and the review of approaches to linking cultures to human rights in Asia-Pacific context all provide concrete bases for finding positive links between human rights and the local systems, knowledge and cultures.

Declaration on Human Rights Education

This volume includes as an appendix the recently adopted United Nations Declaration on Human Rights Education and Training. This is a significant document. However, it is largely unknown to human rights education practitioners in Asia and possibly the Pacific too. Its drafting process has sadly not attracted interest among them, probably due to the way the non-governmental organization lobby during the drafting stage was done.
This document is useful in introducing the broad meaning of human rights education and in stressing the obligation of United Nations member-states to support it. It deserves to be used properly by all concerned institutions.

One note about the Declaration: the addition of the word “training” in “human rights education and training” is superfluous. Training is recognized in practice as part of “education.”

HURIGHTS OSAKA sticks to using “human rights education” unless a convincing and practical justification to lengthen it comes along.

Jefferson R. Plantilla
HURIGHTS OSAKA
Prior to the 1990s, there was no autonomous training institute that would enhance the knowledge and skills of Judges and officials of the Nepali Judiciary, and would undertake academic research to address their needs. But with the separation of Nepali Judiciary from the executive branch of government in 1990, the establishment of an autonomous judicial training institute was deemed necessary. Consequently, an executive ordinance in 2004 established the National Judicial Academy. The Nepali Parliament replaced the ordinance in 2006 with the National Judicial Academy Act (NJA Act). By then, NJA has become an umbrella institution for the training of judges, judicial officers, government legal officers, government attorneys and private law practitioners in Nepal.

**The National Judicial Academy**

The National Judicial Academy (NJA) is an autonomous body that operates under the broad policy guidelines of sixteen-member Governing Council headed by the Chief Justice of Nepal. The NJA Act provides for an Executive Body representing clientele organizations, namely, the Supreme Court, Office of Attorney General, Ministry of Law and Justice, Nepal Bar Association, and the Judicial Council Secretariat. An Executive Director, who is appointed by the Chief Justice of Nepal under the recommendation of the Judicial Council, heads the Executive Board of the NJA. S/he is also responsible for day-to-day activities. NJA envisions to promote an equitable, just and efficient justice system for Nepal through training, professional development, research and publication programs that address the respective needs of judges, judicial

*Shreekrishna Mulmi is the Research Officer at the National Judicial Academy (NJA) of Nepal. He holds a LL.M. in Criminal and Corporate Law from the University of Pune in India in 2004 and second LL.M. in Human Rights from the University of Hong Kong in 2009.*
officers, government attorneys, government legal officers, judicial officers, private law practitioners and others who are directly involved in the administration of justice.

In short, under the NJA Act, it has the following objectives:

- To conduct training, conference, workshop, seminar, symposium, interaction program for the purpose of enhancing knowledge and professional skills of the judges, judicial officers, government attorneys and private law practitioners and bringing about attitudinal changes that enhance competence.
- To undertake research in the field of law and justice and to make available legal literature of scholarly and practical significance to judges, judicial officers and others who are involved in judicial administration.
- To promote a competitive, professionally competent, service-oriented and effective private Bar.

The Government of Nepal allocates an annual budget as a grant necessary for the training and research activities and also expenses for the salary and facilities of NJA staff (both regular and those on contract basis). The Executive Board and Governing Council of NJA approve an annual plan in the beginning of each fiscal year for the training and research activities. The plan basically depends on training needs assessment in the clientele organizations and also on demands put forward by clientele organizations for the fiscal year. Basically, the program planning addresses the training needs of judges, judicial officers and prosecutors who are being promoted to higher posts, and also judges who are being transferred from one place to another. Some programs are designed as refresher courses. NJA also provides in-service training for the newly designated Officers of the Nepal Judicial Service after promotion to higher posts. There is no specific method or criteria in designing the programs, but the annual plans are based on the needs gathered from consultations with the clientele organizations.

After fixing the dates of the training activities for the whole year and preparing the respective curriculums, NJA sends request letters for nomination of participants in the training activities to the concerned nominee organizations. NJA provides travel and daily allowances to nominated participants for taking part in the training activities.
NJA also provides training based on specific agreements with partner organizations. Plans under these agreements are set according to the convenience of NJA and partner organizations.

**Human Rights Programs and Methodology**

The training program of NJA on human rights and other thematic issues is designed to provide all stakeholders the opportunity to interact among themselves. The mixed group training is meant to facilitate the identification of human rights problems by the participants themselves and for them to find out the role that each of them could play to address the problems. In addition, the training program includes field visits to enable the participants to understand the reality of the subject matter and to discuss concrete measures to address the issue. The NJA training focuses on enhancement of knowledge and skills of the participants, and development of positive attitudes towards their professional life.

Trained judges, prosecutors and judicial officers from the Nepali Judicial Service implement the program. The NJA faculty members and other officers also lead the training sessions. Whenever the subject of the training requires specific input, experts from non-law sectors are invited to lead the sessions.

NJA usually trains the trainers on how to make their presentations more effective and interesting. The NJA also undertakes content-based training for the trainers focusing on particular thematic issues. Thus the NJA trainers have training on both the process and content of the training program. NJA proposes a list of trainers from among judges, prosecutors, lawyers and judicial officers from the Nepali Judicial Service. The respective institutions formally nominate the proposed trainers. The list of proposed trainers is made on the basis of academic and professional credentials, and the possibility of their future role as members of the extended faculty of NJA.

The pedagogical approach in the human rights education activities of NJA generally consist of paper presentations, discussions, and interactive question-and-answer sessions. On some occasions, group exercises are carried out to facilitate interaction among the participants. Relevant handouts are distributed to the participants.

Each training session runs for one hour and a half. Three to four sessions are held each day. Resource persons for particular subjects are assigned in advance. Usually, topics are assigned to those who have relevant expertise
and experience. As to structure and delivery, NJA urges the educators, facilitators, and presenters to use adult learning methods in the delivery of teaching sessions to enable them to lead or deliver the training program more effectively. The trainers/facilitators use teaching aids (powerpoint and flip charts) and facilities (overhead projector and other equipments). They also distribute handouts or powerpoint printouts to the participants.

The participants evaluate each session. The evaluation covers the performance of the resource person as trainer in the session. The participants fill up an evaluation form at the end of each training session. The aggregate score of the participants’ evaluation is a major factor in deciding whether or not to invite the resource person as trainer in the next training program. Only those who receive high scores in the evaluation are invited in the next training activities.

The participants also evaluate the whole training program, filling up evaluation forms during the final day of the training. This evaluation covers the organization of the training activity, selection of the topics, resource persons, and venue. They are also requested to give feedback on the overall management of the training. This is mainly meant to help the NJA and the training coordinator to improve their management of the subsequent trainings. See Annex A for an example of a training workshop program.

**Human Rights Education Activities**

A number of training activities and workshops on curriculum development for potential resource persons and trainers started immediately after the NJA establishment in 2004. During the 2004-2005 period, NJA held four Training of Trainers (ToT) workshops to train resource persons on how to lead training sessions. The curriculum development workshops developed a number of curriculums for different tiers of judges and other officials in the judiciary. NJA also held orientation programs for District Judges from different districts and Bench Officers working in the Supreme Court. In addition, the NJA held a number of training activities on commercial law. All together, around five hundred participants attended the NJA initial training program. Though human rights training was not the main focus of the activities during this period, human rights training activities initiated the NJA human rights program for the judiciary in Nepal. Also, the then NJA Executive Director, Honorable Justice Kalyan Shrestha and presently a Justice of the
Supreme Court of Nepal, held a number of meetings with different international human rights organizations working in Nepal on this matter.

During the second year (2005-2006 period), NJA started to run two types of programs based on fund source (government budget and donors’ fund). Government budget supports the program for the overall knowledge and capacity development of the stakeholders of the Judiciary, whereas programs in partnership with donors focus on different areas of human rights. During the second year, NJA held a number of programs on human rights issues such as combating human trafficking, and gender equality and justice. NJA worked in partnership with several donors such as the United Nations Development Fund for Women (UNIFEM), United States Agency for International Development (USAID), South Asia Regional Initiative/Equity (SARI/Equity, New Delhi), Mainstreaming Gender Equity Program (MGEP), etc. NJA was able to develop a handful of resource persons in the area of gender justice through its training for trainers activities. It even facilitated discussion with South Asian judges on combating human trafficking and also invited experts from other countries to share knowledge and experiences in combating human trafficking and gender justice issues. As a result, NJA was able to establish partnership with United Nations agencies and international non-governmental organizations for the enhancement of judicial capacity. Altogether around one hundred fifty Judges and officials of the judiciary took part in the combating human trafficking and gender justice training activities. Beside those partnerships, NJA has completed eighteen regular training and curriculum development activities. It also completed an assessment of the training needs of its stakeholders. The assessment showed that almost all respondents demanded training on human rights topics. In response, NJA designed a two-year training plan covering all areas of law and justice including human rights issues. From this period onward, NJA has been designing curriculums for different groups of stakeholders with a component on sensitization of participants on human rights and related issues whenever relevant in the courses.

During the third year (2006-2007 period) the NJA programs and partnerships continued to expand and have more focus on human rights and gender justice. Human rights sessions have been incorporated in the general training design for judges and other officials of the judiciary. There was a particular focus on juvenile justice training in view of the establishment of juvenile bench in pilot courts covering almost all district judges and other of-
ficers designated to work in such juvenile benches. This training was in partnership with the Central Child Welfare Board (CCWB), a statutory body for the realization child rights. During this year, judges and high officials were trained in the University of Queensland Center for Public and International Law in Australia on management and chairing judicial sessions. In addition to training activities, NJA initiated research programs to support compliance with judicial directives particularly on human rights cases brought to the Supreme Court of Nepal through public interest litigation. Altogether there were thirty-one training activities, including eleven partnership-based activities, and most of them were related to human rights issues. Five hundred ninety-two participants benefited from the NJA program during this year.

On the third year (2007-2008 period), NJA held thirty-five training activities that included interactions, orientation programs, workshops and consultations. Twelve training activities were government funded and categorized as in-house programs and another twenty-three activities were partnership funded. NJA held these activities with the support from different agencies such as CCWB, United Nations (UN) agencies such as Public-Private Partnership for Urban Environment (PPPUE) Project of the United Nations Development Programme (UNDP), and other institutions such as Dewalka Foundation, and Danida-Human Rights and Governance Programme (HUGOU). Apart from the normal courses for the Judges, judicial officers, prosecutors and lawyers, NJA held a thirty-five-day long in-service training for the Officers of Nepal Judicial Service. In this course, apart from the other proficiency enhancement-related topics, human rights and humanitarian law related subjects were also introduced. Basic human rights concepts, international human rights instruments, implementation mechanisms of human rights instruments, fair trial issues, gender justice, juvenile justice, access to justice and many other human rights issues were discussed. Similarly, during this period NJA held a large number of juvenile justice-related five-day training activities covering one hundred twenty judges of different district courts and twenty-two judges of the Court of Appeal of the country. The objective of the training was to sensitize the judges on juvenile justice based on the Convention on the Rights of the Child and as part of state obligation to guarantee the rights of children. NJA worked with Danida/HUGOU and PPPUE for the different training activities. Moreover, the NJA prepared a comprehensive training-cum-resource manual and standard operating procedure (SOP) for the use of the Nepali Judiciary in view of
the Combating Human Trafficking Act passed by the Parliament. The manual incorporated national, regional and international, agreements, declarations, memorandums of understanding (MoU), conventions and charters that directly or indirectly relate to human trafficking and the human rights of women and children.

In addition to the activities under the regular and partnership-based activities, NJA organized talks on specific issues with the participation of special guest speakers. They were eminent scholars from different countries who delivered talks on different issues of human rights and justice.

During the third year (2007-2008 period), the respected former Chief Justice of India and United Nations (UN) Human Rights Committee member, Mr. P.N. Bhagwati, delivered a talk on “Justiciability of Economic, Social and Cultural Rights” on 18 December 2007. The Justices of the Nepali Supreme Court, Court of Appeal, judges of district courts, the Attorney General of Nepal, other high level judicial officials, and lawyers attended the talk. Similarly, another former Chief Justice of India, Mr. J.S. Verma, delivered a talk on the “Role of Judiciary in the Working of Indian Federalism.” Justice Verma also led the National Human Rights Commission of India and was known for judicial creativity in the field of gender and social justice, sustainable development and human rights. Judges and high-level judicial officials and lawyers attended the talk, and engaged in a fruitful discussion.

Moreover, a renowned feminist and Professor, Catharine MacKinnon, delivered a speech on “Mainstreaming Women’s Rights Issues in the Justice System” on 12 May 2008. Professor Suzannah Linton, Director of LL.M. Program at the University of Hong Kong, gave a speech on the “Role of Judges in Time of Transition” in March 2008. After her speech, the participants engaged the speaker in an extensive discussion. Judges of the Court of Appeal and district courts, senior prosecutors and other high-level judicial officials and lawyers were present in the talks.

On the fourth year (2008-2009 period), NJA held a total of fifty-nine training activities, workshops, seminars, and talks for the judges, government attorneys, officers and staffs of the courts, lawyers, police officers and officers of quasi-judicial bodies. A total of one thousand eight hundred thirty-three persons participated in the activities. NJA also undertook two research activities on government grants and partnership basis.

The activities during this year focused more on gender justice and equality in partnership with UNIFEM, United Nations Population Fund
Human Rights Education in Asia-Pacific (UNFPA) and UNDP/Enhancing Access to Justice Program. Three-day-long activities were held with a total of around one hundred fifty participants (judges, government attorneys, officers and staffs of the courts, lawyers, police officers and officers of quasi-judicial bodies). These activities covered different issues including gender justice and equality, gender discrimination and its effects, women's access to justice, national and international legal provisions to combat gender-based violence and their review, role of the judiciary and other institutions in gender justice, legal provisions against trafficking of women and children, provisions and secrecy procedures relating to in-camera hearing, and protection of victims and witnesses. In addition, a separate activity regarding in-camera hearing was held to make participants conversant with legal provisions and secrecy procedures that protect the right to privacy of victims in the judicial process. A total of sixty members of the judiciary directly benefited from this one-day activity.

During this period, different scholars delivered speeches on different themes on law and justice. Professor Diegfried Bross, a Judge in the Federal Constitutional Court of Germany, gave a talk on “Experiences of Constitutional Court in Germany” and answered the queries made by the judges and other participants. Similarly, Professor Jean Zermatten (then Vice-Chairperson and now Chairperson of the UN Committee on the Rights of the Child) gave a talk on “Global Trends on Juvenile Justice,” while Professor John Gerrit Lammers, Director of Hague Forum for Judicial Expertise in the Netherlands, delivered a talk on the concepts of monism and dualism in international law.

On the fifth year (2009-2010 period), NJA held sixty-one different activities on law and justice involving three hundred fifty-four judges, five hundred ninety-eight officers, three hundred twenty-seven junior staff, one hundred forty-one private law practitioners, and one hundred forty-one other participants (members of the police, civil society members, professors, human rights activists, representatives of different organizations). NJA also prepared eleven studies and research materials. Like in the preceding years, NJA held in this year its regular programs including human rights-related activities.

NJA held induction training for judges of Court of Appeal, District Court judges who were promoted to the Court of Appeal, and District Court judges. The induction training included discussion of a number of human rights topics. A thirty-five-day in-service training for the officers of Nepal Judicial Service included discussion on major human rights instruments
and their implementing mechanisms along with humanitarian and international criminal law as part of the curriculum.

During this period, NJA undertook a number of activities that were directly related to human rights. They included the following:

a. Manual on Human Rights in the Administration of Justice

The perceived lack of manual on human rights training for the Nepali judiciary made NJA prepare a comprehensive manual on human rights in the administration of justice in Nepal based on the *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, produced by the UN Office of the High Commissioner for Human Rights. Human rights experts and judges were involved in the preparation of this manual. This voluminous manual of seven hundred pages covers human rights-related cases decided by the Nepali judiciary. It is in Nepali script so that all judges and officials of the Nepali judiciary can read it easily. It covers the following topics:

- Concept of international human rights, legal provisions relating to fundamental rights in Nepal and assessment of other legal provisions related to human rights in Nepal
- Major Instruments on Universal Human Rights
- Regional Human Rights Instruments and Their Implementation Mechanisms
- Independence and Impartiality of Judges, Prosecutors and Lawyers
- Concepts on Fair Trial, Provisions relating to Fair Trial Issues (Pre-Trial, Trial and Post Trial)
- International Legal Standards for the Protection of Persons Deprived of Liberty
- Use of Non-custodial Measures in the Administration of Justice
- The Rights of the Child in the Administration of Justice
- Women's Rights in the Administration of Justice
- Some Other Key Rights: Freedom of Thought, Conscience, Religion, Opinion, Expression, Association, and Assembly
- The Right to Equality and Non-Discrimination in the Administration of Justice
- The Role of the Courts in Protecting Economic, Social and Cultural Rights
• Protection and Redress for Victims of Crime and Human Rights Violations
• The Administration of Justice During State of Emergency
• Concepts of Transitional Justice and their Uses.

NJIA held three training activities on the subject “Human Rights in the Administration of Justice” prepared by learned experts in partnership with European Union’s Conflict Mitigation Program (CMP) II and taking different aspects of human rights concerns into consideration. District Court judges, officers of Nepal Judicial Service, private law practitioners and police officers participated in the activities. One training activity was held in the eastern region of the country and the remaining two were held in Kathmandu. Among the three activities, one was five-day long and two were three-day long. A total of eighty participants were trained in these three training activities. Apart from this, NJIA held a three-day training activity on “Human Rights and Social Justice.” Twenty-four participants consisting of District Court judges, officers of Nepal Judicial Service and private law practitioners participated in this training that focused on the concept of human rights, international standards for the implementation of human rights treaties, comparative study on social justice in different countries, position and application of social justice in Nepal, measures for promoting social justice in Nepal, etc.

b. Training on incorporating international human rights instruments into domestic judgments

NJIA undertook two two-day trainings for forty Bench Officers (Judges’ Assistants) at the Supreme Court in partnership with the UN Office of High Commissioner for Human Rights in Nepal on incorporating international human rights instruments into domestic judgments. The second training had improvements based on the feedbacks received from the participants in the first training. The first training included concepts of human rights law, the remedies for the victims of human rights violations, status of international human rights and their domestic application, serious human rights violations, relations between human rights law and humanitarian law, and role of Bench Officers in the human rights violations cases.
c. Consultation on Right against Torture

Since the right against torture had not been discussed much in the training activities for the Nepali Judiciary, NJA focused on combating torture in a consultation held in 2010. The consultation discussed torture as one of the serious human rights violations and the state obligation to guarantee the protection of the right against torture in particular when persons were interrogated for any crimes. It also included the discussion of national and international efforts and mechanisms for the prevention of torture, judicial response against torture, and the role of judges. Twenty-five participants attended the consultation, which was held with the support from the Association for the Prevention of Torture, Geneva and Advocacy Forum-Nepal.

d. Training on Juvenile Justice System

Beside those trainings, there were other partnership-based projects for other human rights issues such as juvenile justice and gender justice. During the 2009-2010 period, eight three-day training activities on juvenile justice have been held. In partnership with UNICEF, seven activities of three days each have been conducted in different places of the country. The participants were Shrestedars (Chief Administration Officers of the District Courts), other officers of the courts, lawyers and police officers. Similarly, in partnership with CCWB, one activity was conducted for junior staff designated to the Juvenile Bench in different parts of the country. In this training activity, contents like child development, juvenile delinquency and its causes, concept of juvenile justice and present situation of Nepal, restorative justice, the Convention on the Rights of the Child and other international instruments, the Child Rights Act and related instruments in Nepal along with judicial trends on juvenile justice were discussed. These training activities covered around two hundred participants.

e. Training on Gender Justice

In partnership with UNIFEM, NJA held four training activities of three days each on gender equality and justice for the staff working in judicial sectors. The training included the following topics:

- Concepts of Gender Equality
- Gender Discrimination and Gender Justice
• International Frameworks on Gender Justice with Special Reference to Convention on the Elimination of All forms of Discrimination Against Women
• Recent Changes on Legal Regime on Gender Justice in Nepal
• Anti-trafficking Law of Women and Children
• Protection of Victims and Children in Judicial Process
• In-camera Hearing: Concepts and Process
• Developing Positive Attitude towards Gender Victims
• Right to Privacy and Supreme Court’s Guidelines on Right to Privacy
• Judicial Trends on Gender Justice in Nepal.

On the sixth year (2010-2011 period), NJA expanded its activities and completed eighty-two activities involving two thousand two hundred eighty-two participants (judges of all tiers, prosecutors, judicial officers, law officers, lawyers, support staff and other officials).

NJ A held activities focusing on human rights issues as in the previous year including the following:

a. Training on Human Rights in the Administration of Justice

NJ A held five training activities in different parts of country in partnership with the International Commission of Jurists and Advocacy Forum-Nepal on “Human Rights in the Administration of Justice.” The training activities used the manual on human rights in the administration of justice. Each training lasted for five days, and involved one hundred ten judges, prosecutors and lawyers.

b. Training on Gender Justice and Gender-based Violence

This three-day training was held twelve times, with two hundred fifty judges and other officers of the judiciary as participants.

c. Training on Transitional Justice

This two-day training aimed to facilitate justice to the victims of armed conflict, end the state of impunity, and find out the role of judiciary. It also covered discussion on transitional process and models to transform peace in a real sense. One hundred participants joined the training activities that were supported by Advocacy Forum-Nepal.
d. Workshop on Human Rights and Social Justice

NJIA held the “Workshop on Human Rights and Social Justice in Nepal” to impart knowledge on jurisprudence and practice on social and economic rights including the rights of disadvantaged groups such as rights of women and rights of indigenous and marginalized groups developed at the international level in recent times. Further, it discussed the enforceability of socio-economic rights in Nepal. The workshop had an experience-sharing format. International resource persons from the University of Oslo as well as domestic resource persons facilitated the sessions. There were fruitful interactions and discussions between the participants and the resource persons. The participants were from different justice sectors including judges of Court of Appeal, District Court judges, prosecutors, high-ranking judicial officers and private law practitioners working in the field of constitutional and socio-economic issues in Nepal. A new partner, the Norwegian Center for Human rights, Oslo University worked with the NJA in holding the workshop.

e. Training on right to privacy and in-camera hearing process

NJAA held several training activities on the role of the judiciary in minimizing violence against women and creating a just society that ensures women’s human rights. In this context, the training activities dealt with the means of ensuring right to privacy of women victims and their access to justice. They focused on the in-camera hearing process and its significant role. One hundred participants took part in these activities, with the support of UN Women (United Nations Entity for Gender Equality and the Empowerment of Women).

f. Workshop on rights of migrant women workers

The UN Women and the Ministry of Labor and Transportation Management worked with NJA in holding two-day workshops on the rights of migrant women workers. Eighty judges and other staff attended the program.

Publications and Research Activities

In line with its objectives, NJA produces publications that support the development of the legal system and enhance the capacity of judges and other hu-
human resources of Nepali Judiciary through upgraded knowledge and skills. The NJA publications aim to sensitize them and make them conversant with the international law jurisprudence. See Annexes B and C for the list of publications and research activities undertaken by NJA so far.

Since the NJA is an institution established for academic discussion and information dissemination to concerned organizations toward legal and judicial reform, it began the publication of its research activities through the NJA Law Journal. Articles contributed by eminent scholars, jurists, experts from the within and outside the country are published in this journal. It is also meant to encourage and strengthen serious legal research in Nepal and reach out to a larger community in Nepal and abroad. NJA sees the importance of research and judicial education going hand-in-hand to enrich each other through enhanced knowledge and skill and development of synergy for bringing about reforms.

Since the Nepali system of law and justice is still evolving, it requires academic discussion to internalize and adopt values developed in the field of international law and human rights. For this purpose, a sustained collaboration of academia and practitioners in research and publication is needed. NJA hopes that the NJA Law Journal is providing a platform for such collaboration. NJA Law Journal started as an annual publication in 2007. See Annex B for the list of NJA Law Journal issues.

NJA also publishes annually a report on its activities. See Appendix B for the list of Annual Reports that have been published.

**Challenges and Conclusion**

Within the short span since its establishment, the NJA has undertaken a large number of trainings for judges and other participants as well as research activities that are needed by the judiciary. The research programs proved to be foundation of interventions to develop the legal and judicial systems in Nepal. So far, the NJA has trained seven thousand three hundred forty-four participants through the three hundred fourteen training activities held since its establishment. The training activities significantly increased in recent years. As mentioned above, NJA held eighty-two training activities covering a total of two hundred ninety-eight days during the 2009-2010 period alone. These training activities have significant impact on the professional life of the judges and other participants. The impact is seen in the form of
upgraded knowledge in international human rights law, advancement in the
delivery of justice, incorporation of human rights standards in the court de-
cisions, sensitization in gender justice and juvenile justice, and many others.
There has been no survey undertaken to measure the impact, however.

NJA faces many challenges in its training program. First of all, the nu-
umerous training activities of NJA have not yet been evaluated on their ef-
effectiveness or impact. With regard to human rights training, the activities
have varied modes of execution and courses due to the different partners
involved and limitation of funding resources. There is a need for training on
impact assessment on the work of the judiciary to make the training more
effective. In addition, organizational change is needed to allow longer-term
programming. Piecemeal programming may not bring change in a way that
would be noted by the people at large. Therefore, the introduction of large
scale and sustainable projects is required to see more positive signs in the
Nepali Judiciary.

Having trained human resource has been a static problem at the NJA
from its inception. The institutionalization of NJA depends on available
trained human resources. The Supreme Court and the Office of the Attorney
General have deputed few judges and high-level officers as trainers. These
judges and high-level officers are deputed without fixed tenure, and there-
fore serve only for a year or two. With interim work period, they face lack of
knowledge on training management and teamwork culture. Some of them
also suffer in continuing to serve their superiors while acting as trainers at
the NJA. In this context, since NJA was established as independent and au-
tonomous body, it should expedite the development of its own faculty mem-
ers. This will minimize the tension caused by deputation on ad hoc basis
and will avoid the problem related to extreme lack of court judges.

Another challenge refers to the need for the NJA faculty members to be
well verse with the knowledge, as well as skill, in teaching global trends on
model judiciary. They need training in this regard such as through exposure
visit and participation in the international programs on the subject. In addi-
tion, the faculty members can take academic courses such as LL.M. and PhD
programs or Juris Doctor research programs that are worthwhile contribu-
tions to the institution-building of NJA. There is no doubt that the NJA needs
highly skilled and research oriented faculty members. To keep them within
NJA, a staff retention policy on providing attractive work package should
be adopted. The 2006 NJA Act has a provision on the establishment of an
Academy Fund that can be used for this purpose. But this system is not in operation yet.

Endnotes

1 A Judicial Training Centre that existed prior to 1990 was only for the officers of the Nepal Judicial Service who worked under the Ministry of Law and Justice, Government of Nepal.

2 The Chair of the Governing Council of the NJA is the Chief Justice of Nepal. The members consist of the following: the Minister of Law and Justice, the Vice-Chairperson of National Planning Commission; two justices from among the sitting Justices of the Supreme Court, the Attorney General of Nepal, one person from among the retired Justices of the Supreme Court, the Dean of the Faculty of Law at Tribhuvan University, one judge from among the sitting judges of the Court of Appeal, one person from among the professors of law having at least five years of teaching experience, the President of the Nepal Bar Association, one judge from among the sitting judges of District Courts, and three law graduates representing women, ethnic communities and Dalits (Nepalis who are discriminated based on their low caste) having fifteen years of involvement in the field of law and justice. The Executive Director of National Judicial Academy acts as Member-Secretary to the Council.

3 An Executive Director heads the NJA Executive Board, while the Secretary to the Ministry of Law and Justice, Secretary to the Judicial Council, Registrar of the Supreme Court, Senior-most Deputy Attorney General of the Office of the Attorney General, General Secretary to the Nepal Bar Association work are Members. The Governing Council as Member-Secretary of the Executive Board nominates a senior-most employee of the NJA.

4 For the nomination of Judges of all tiers and judicial officers in all courts in the country, a request letter is sent to the Supreme Court of Nepal; for the Prosecutors’ nomination, a request letter is forwarded to the Office of the Attorney General; for the officers working under the Ministry of Law and Justice, a request letter is dispatched to the Ministry of Law and Justice; and similarly, for the lawyers’ nomination, a request letter is sent to Nepal Bar Association.


6 Created by the Children’s Act 2048 BS (1992).
Annex A

Program of Workshop on Combating Trafficking of Women and Children
2006
Kathmandu, Nepal

A. Workshop on Effective Implementation of the Laws and the Institutional Mechanism to Combat Trafficking of Women and Children in Nepal – Part I

1. Inaugural
2. Field Visit - ABC Nepal, Koteshwor, Kathmandu
3. Session One - Conceptual Understanding of Human Trafficking, Migration and Prostitution and Role of Judiciary in Combating Human Trafficking
4. Session Two - Women's Human Rights, Violence against Women and Gender Justice
5. Discussion of the Observations from the Field Visit
6. Session Three - Psychological Impact of Violence on Women
7. Session Four - National Laws, International and Regional Legal Framework against Trafficking
8. Session Five (Joint Session) - Effective Implementation of Anti-trafficking Laws
   8.1 Victims’ Perspective
   8.2 Civil Society’s Perspective
   8.3 Police’s Perspective
   8.4 Government Attorneys’ Perspective
   8.5 Judges’ Perspective
9. Session Six - Making Road to Justice Accessible: Victim Protection, Appearance and Examination and In-camera Hearing
10. Session Seven - Critical Assessment of the Judicial Responses on Trafficking Related Cases
11. Session Eight - Relevance of Victim/Witness Protection Scheme in Criminal Justice System Particularly in Trafficking Related Case
12. Concluding Session
Annex B

Publications of the National Judicial Academy

- Resource material relating to judicial capacity enhancement (2007)
- Resource materials relating to gender justice (2006)
- A research report on the situation of implementation of directive orders issued by the Supreme Court of Nepal (2006)
- A Study on Implementation of Directive Orders Issued by the Supreme Court (2007)
- Compilation of judgments of District Courts (2009)
- Concepts on in-camera hearing and its operating guidelines (2009)
- Standard operating procedure (SOP) for investigation, prosecution of the human trafficking offence (2008)
- Guidelines on judgment execution (2009)
- Resource materials on mediation (2009)
- Compilation of landmark judgments of District Courts (2010)
- Compilation of landmark judgments of Court of Appeal (2010)
- The landmark decisions of the Supreme Court, Nepal on Gender Justice (in Nepali) (2010)
- The landmark decisions of the Supreme Court, Nepal on Gender Justice (in English) (2010)
- Concepts on in-camera hearing and its operating guidelines (2010)
- Resource materials on juvenile justice (2010)
- Sentencing policy: principles, practices and requirements for amendments (2010)
- Compilation of judgments on children rights and juvenile justice (2010)
- A Study on Domestic Violence Act, 2066 in line with International Human Rights Principles (2011)
- Present status of criminal justice administration by quasi-judicial authorities (2011)
Laws to be amended for the accession of Rome Statute of International Criminal Court (2011)
- Status of Environmental Justice in Nepal (2011)
- Status of Gender Discrimination and Gender Justice in Nepal (2011)
- Concept of Intellectual Property in the Context of Nepal (2011)
- Social Justice and Human Rights (2011)
- Compilation of Landmark District Court Judgments (2011)
- Compilation of Landmark Court of Appeal Judgments (2011).

In addition, NJA has also published the following issues of its law journal and annual reports:

I. Law journal
- *NJA Law Journal, 2007*
- *NJA Law Journal, 2008*
- *NJA Law Journal, 2009*
- *NJA Law Journal, 2010*

II. Annual Report
- Annual Report 2004/05 (in Nepali)
- Annual Report 2005/06 (in Nepali)
- Annual Report 2006/07 (in English)
- Annual Report 2007/08 (in Nepali)
- Annual Report 2007/08 (in English)
- Annual Report 2008/09 (in Nepali)
- Annual Report 2008/09 (in English)
- Annual Report 2009/10 (in Nepali)
- Annual Report 2009/10 (in English)
Annex C

Research Activities of the National Judicial Academy

The following are the reports on research activities undertaken by NJA in the field of law and justice. Some reports have been published:

- A research report on the situation of implementation of directive orders issued by the Supreme Court of Nepal (2006)
- Case-flow Status at the Supreme Court of Nepal (not published)
- Present status of criminal justice administration by quasi-judicial authorities (2011)
- A Study on Domestic Violence Act, 2066 in line with International Human Rights Principles (2011)
- Laws to be amended for the accession of Rome Statute of International Criminal Court (2011)
- A Study on Implementation of Directive Orders Issued by the Supreme Court (2007)
- A Study on Injunctions and Mandamus issued by the Court of Appeal in Nepal (to be published)
- A Study on Court Management No. 188 of National Code and Discretionary Power of the Judges (to be published)
- Impact Analysis of the Training on Case Management conducted by the National Judicial Academy (to be published)
- Cases decided under the Jurisdiction of the Judicial Review and their Implementing Status (to be published)
- Roles and Views of Judiciary of Nepal in Implementing of International Treaties and Agreements (to be published)
- Training Needs Assessment of Lawyers (to be published)
Judicial Education and Human Rights in the Philippines

Sedfrey M. Candelaria and Ronald P. Caraig

The Philippine Judicial Academy (philja) is the education arm of the Supreme Court of the Philippines. It is mandated to conduct training not only for judges and court personnel but also for those aspiring for positions in the judiciary. Taking the lead in judicial education, it has introduced courses on human rights with multidisciplinary content and techniques in its training programs.

This article outlines and expounds the various course offerings of philja in the past decade focused on human rights concerns. It begins with a background on philja and proceeds to discuss the programs on human rights developed at various levels of the judicial hierarchy. It concludes on a high note for the future of judicial education, not only in the Philippines but even in the region.

The Philippine Judicial Academy: Background

philja was created by the Supreme Court on 12 March 1996 through the issuance of Administrative Order No. 35-96. It received its mandate on 26 February 1998, through Republic Act No. 8557. This law institutionalized philja as a “training school for justices, judges, court personnel, lawyers, and aspirants to judicial posts.”

philja provides and implements a curriculum for judicial education, and conducts seminars, workshops and other training programs designed to upgrade legal knowledge, moral fitness, probity, efficiency, and capability. The Academic Council of philja considers and approves the trainings, programs and activities and sets out policies relating to judicial education. philja has fourteen Academic Departments, which include the Department of International Law and Human Rights Law and the Department of Special Areas of Concern. These two departments propose curricular offerings relating to international law, human rights law, women and children, environment, among others, and take part in the review and approval of academic programs and courses of philja.
PHILJA includes courses in its curriculums and programs that address the latest developments in substantive and procedural law, as well as updates on technology and its possible application in the courts. It holds lectures on ethics and value formation and other special issues or areas of concern, such as problems of vulnerable and marginalized groups in society, and conducts faculty enhancement and leadership trainings. PHILJA regularly holds its core (flagship) programs that include the Pre-Judicature Program, the Judicial Career Enhancement Program, the Orientation Seminar-Workshop for Executive and Vice Executive Judges, the Orientation Seminar-Workshop for Newly Appointed Judges and Clerks of Court, and the Continuing Legal Education for Court Attorneys.

PHILJA’s special focus programs are thematic in nature, focusing on new rules and current trends and developments, as well as emerging issues in particular areas of law, including human rights and international humanitarian law. The other programs of PHILJA include development programs for court personnel, alternative dispute resolution programs, convention-seminars, programs for quasi-judicial agencies, discussion sessions/roundtable discussions, special lectures, and international conferences. PHILJA also produces regular and special publications.

Human Rights Concerns

The broad range of human rights concerns in the Philippines has prompted the Supreme Court to develop new rules for application by the courts. Often, new rules emerge through a situation analysis of events confronting the courts and the society at large. One remarkable example of how the Supreme Court and PHILJA have responded to such human rights concerns is the multi-sectoral approach to address the phenomena of extrajudicial killings and enforced disappearances.

In the Helpbook on Human Rights Issues: Extralegal Killings and Enforced Disappearances, Dean Pacifico A. Agabin notes that “a scan of the horizon of human rights in the Philippines over the past decade shows a dark landscape brightened only by a few shafts of light at infrequent intervals.” He stresses that “after September 11, 2001, the world, including the Philippines, has never been the same again.”

To address the alarming incidence of extrajudicial killings and enforced disappearances, the Supreme Court convened on 16-17 July 2001
the National Consultative Summit on Extrajudicial Killings and Enforced Disappearances. During the Summit, reports showed a “steady rise on extralegal killings from 2001 to 2006”\textsuperscript{18} and “a similar rise in enforced disappearances.”\textsuperscript{19}

Quoting data provided by Karapatan, an alliance of organizations that advance human rights, Dean Agabin writes that since 21 January 2001 the number of victims of extrajudicial killings reached 1,206\textsuperscript{20} while that of enforced disappearances rose to two hundred and six.\textsuperscript{21}

Dean Agabin continues:

The bleak and forlorn landscape of human rights in the Philippines has been illuminated partly by the Supreme Court in 2007. Shocked and outraged by the rising tide of extralegal killings and enforced abductions committed against political activists and journalists, the Court, after conducting the summit on the issues, promulgated the rule on the writ of amparo that took effect in October 2007.

The following year, the high tribunal approved the rule on habeas data, which empowers the courts to compel government and military officials to allow access to official documents by invoking ‘the right to truth.’\textsuperscript{22}

The convening of a national conference on human rights and the adoption of rules on writ of amparo\textsuperscript{23} and habeas data\textsuperscript{24} are not the only significant efforts of the Supreme Court and PHILJA that put human rights at the core of judicial education in the Philippines. The succeeding sections of this article describe the various courses, programs, tools, and techniques employed in the hundreds of seminar-workshops held by PHILJA.

**PHILJA and Human Rights Education**

Since its inception more than fifteen years ago, PHILJA has endeavored and continues to include human rights and related issues in its trainings, programs and activities\textsuperscript{25}—from the general topic of human rights, to specific or particular rights of indigenous peoples, women, children, even economic, social and cultural rights, to cite a few, to the intertwined issues of human rights and the environment, to national laws and international human rights treaties and covenants.
PHILJA’s Core Programs

PHILJA has six core or flagship programs. The Pre-Judicature Program provides initial training to aspirants for judicial positions, as mandated by the PHILJA’s statutory and administrative charters. Upon appointment to the judiciary, judges undergo an Orientation Seminar-Workshop for Newly Appointed Judges to prepare them for assumption of office and the discharge of their duties. The Orientation Seminar-Workshop for Executive Judges and Vice Executive Judges is an update on laws, legal developments and issuances that would enhance their capability to discharge their administrative functions. For judges and judicial personnel who have been in the judicial service for some time, they undergo the Judicial Career Enhancement Program (now the Regional Judicial Career Enhancement Program). Newly appointed clerks of court are also required to attend the Orientation Seminar-Workshop. Finally, the Academy also has a Continuing Legal Education for Court Attorneys that aims to meet the professional enhancement needs of Court Attorneys of the Supreme Court and Appellate Courts.


Special Focus Programs

As mentioned earlier, PHILJA’s special focus programs are thematic in nature, focusing on new rules and current trends and developments, as well as emerging issues in particular areas of law, including human rights and international humanitarian law. These programs cater to judges, court personnel and other stakeholders.
Human Rights Law

As early as 2001, PHILJA has held the Philippine Judiciary Workshop on Realizing Economic, Social and Cultural (ESC) Rights to understand the substance, process and the applicability of international norms on economic, social and cultural rights; and to understand the role of the Judiciary in the application of treaty obligations on ESC rights within the context of the Philippine Constitution.

Judicial Seminars on Indigenous Peoples Rights Act were held in 2002 to relate the key provisions of the law to state policy and objectives, to solve problems relative to indigenous peoples rights, and to resolve claims of indigenous peoples under the law.

The Challenge of Terrorism and the Defense of Human Rights seminar was held in 2002 to exemplify the perspective towards the balancing of equities: human rights and terrorism and to discuss and interpret human rights and terrorism provisions in the Philippine Constitution, international documents and covenants.

The Seven-Day Course on International Criminal Law for Philippine Justices and Judges in the Netherlands was developed in 2007 by the Hague Forum for Judicial Expertise, in cooperation with PHILJA’s Department of International Law and Human Rights Law.

The Seminar-Workshop for Judges on Extrajudicial Killings and Enforced Disappearances was held in 2007 to familiarize the participants on the Rule on the Writ of Amparo involving extrajudicial killings and enforced disappearances and to address the concern of judges, among others, on the procedure in identifying and deciding cases on extrajudicial killings and enforced disappearances.

A Forum on the Rule on Writ of Amparo was held in 2007 to disseminate the newly promulgated rule, to address potential problem areas, and share perspectives regarding the protection of life and liberty. A Video Conference on the Rule on Writ of Amparo for Judges and Clerks of Court of the 3rd, 4th, 5th and 11th Judicial Regions was likewise held. The Third Distinguished Lecture Series of 2007 included a lecture on the “Writ of Amparo: An International Perspective.” Thereafter, PHILJA held a Series of Multi-Sectoral and Skills-Building Seminar Workshops on Extralegal Killings and Enforced Disappearances during the 2008-2009 period to address the need for judges
and other stakeholders in the criminal justice system to properly address the
spate of extrajudicial killings and enforced disappearances.


PHILJA organized the International Conference on the International Criminal Court in 2008 to discuss insights on translating International Criminal Court principles into domestic legislation and judicial reform and thus strengthen the domestic criminal justice system.

In partnership with the European Union-Philippine Justice Support Programme (EPJUST), PHILJA held the Knowledge Sharing on New Human Rights Issues: International Humanitarian Law, Anti-Torture Law and Human Security Act in relation to Extralegal Killings and Enforced Disappearances in 2010 to provide an overview of the European experience, as well as the Philippine experience on new human rights issues on International Humanitarian Law, Anti-Torture Law and Human Security Act.

PHILJA participated in three study visits/exchange programs: the EUROJUST Study Visit in The Hague, Netherlands (11-15 October 2010); the Judicial Human Rights Training Exchange Program (29-30 November 2010 and 1-3 December 2010) in Barcelona and Madrid, Spain; and EPJUST Judicial Human Rights Training Exchange Program (7-11 March 2011) in Vienna, Austria.

**Women and Children**

PHILJA held a total of twenty-six programs focusing on human rights and women and children.

The Seminar-Workshops on Strengthening the Legal Protection of Children were held in the 1998-1999 period to familiarize the participants with the Convention on the Rights of the Child (CRC) and the Philippine laws related to children.

During the 2004-2007 period, PHILJA held the Basic and Advanced Regional Multi-Sectoral Seminar-Workshops on Juvenile and Domestic Relations Justice to discuss the rights of families, women and children under the CRC, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other United Nations human rights stan-
The Capacity Enhancement Training for Family Court Judges and Personnel in Handling Child Abuse Cases began in 2006 (and continued until 2011) to demonstrate awareness and sensitivity in handling child abuse cases during and after judicial proceedings. This series of trainings would later utilize vignettes showing court scenes to demonstrate good and bad practices as tools for critiquing. In partnership with the British Embassy and the Child Protection Unit Network, PHILJA produced in 2006 six Video Training Modules on Improving Judicial Proceedings Involving Child Sexual Abuse/Exploitation Cases.

PHILJA held Seminar-Workshops on cedaw and Gender Sensitivity and the Courts for Justices, Judges, and Court Personnel during the 2006-2011 period to enhance their knowledge and develop their awareness and skill on the applicability of cedaw and gender-fair language.

The Members of the Committee on Decorum and Investigation (CODI) of the Supreme Court attended the PHILJA Seminar-Workshops in 2008 to equip them with the know-how on doing investigation and writing reports on sexual harassment cases.

**Access to Justice**

PHILJA held the Seminar-Workshops on Access to Justice and Laws on Women and Children for Judges and Court Personnel of First Level Courts in 2007 to increase the awareness of judges and court personnel of the first level courts on the issues regarding access to justice and basic laws concerning poor women and children, and to identify the role and importance of the Barangay (Community) Justice System in accessing justice.

Under the Access to Justice for the Poor Project, PHILJA held in 2007 an Information, Education and Communication Skills Training for designated Municipal Court Information Officers on the enhancement of the ability of the poor and the vulnerable groups (poor women and children in particular) to pursue justice through their increased knowledge about their basic rights and the Justice System; and the strengthening of the justice system to make it more accessible to poor and vulnerable groups.

PHILJA held in 2008 the Seminar-Workshops on Access to Justice and Code of Conduct to explain the rationale for each of the Canons of the Code
of Conduct for Court Personnel, as it relates to the “traits of a good ethical court personnel.”

The Multi-Sectoral Stakeholders Seminar-Workshops in Improving Access to Justice in Family Courts were held during the 2008-2009 period aimed at raising the level of awareness of participants on Human Rights Based-Approaches to Access to Justice in Family Courts.

**Anti-Trafficking in Persons**

With the enactment of the Anti-Trafficking in Persons Act of 2003 (Republic Act No. 9208 or RA 9208), PHILJA held the following activities:

a. Seminar on Anti-Trafficking in Persons Act of 2003 and its Implementing Rules and Regulations (2002) and the National Inter-Disciplinary Seminar on Trafficking in Persons (2004). These seminars dealt with the international and national efforts to curb, if not altogether eliminate, human trafficking and the roles and responsibilities of the government’s Inter-Agency Council Against Trafficking (IACAT) as provided for in the Implementing Rules and Regulations.


c. Roundtable Discussion on Anti-Trafficking in Persons (2011)—to introduce the basic concepts of human trafficking to non-specialist judges and prosecutors. A series of ASEAN Awareness Program on Trafficking in Persons for Judges and Prosecutors (January, February, June 2011) was held in partnership with the Asia Regional Trafficking in Persons Project (ARTIP), Australian Government Aid Program, and Cardno (an international consulting firm).

d. Competency Enhancement Trainings for Family Court Judges and Court Personnel in Handling Child Abuse Cases and Trafficking Cases - held during the 2008-2011 period to improve the competencies of judges and personnel of family law courts and single salas27 in handling child sexual abuse and commercial sexual exploitation cases.

e. Seminar-Workshop on Combating Human Trafficking in the Philippines was held from 2010-2011 to improve the competencies of judges
and prosecutors in handling human trafficking; to encourage participants to share concerns and problems encountered in handling human trafficking cases and to apprise them of the severity of the human trafficking problem in the Philippines.

Environmental Law

PHILJA held the Judges’ Forum on Environmental Protection: Philippine Environmental Law, Practice and the Role of Courts in 2003 to strengthen the capacity of judges on the handling of environmental disputes in order to protect human health and safeguard the natural environment for present and future generations.

In 2003, the Role of Courts in Fisheries Management: Conference-Seminars on Fisheries and Environmental Laws for Judges and Prosecutors were held to familiarize judges and prosecutors with fisheries and aquatic resource laws and their implementing rules and regulations and to enable judges to effectively and judiciously adjudicate criminal cases for violations of fisheries laws, rules, and regulations.

PHILJA held the Environmental Law Seminar-Workshops for Selected Judges from 2005-2006 to update the participants on the present state of the environment, and on the five environmental laws; and to emphasize the important role of the Courts in protecting the environment.

It held in 2007 the high-profile Asian Justices Forum on the Environment: Asian Experience to Strengthen Environment Adjudication in Asia in partnership with the U.S. Agency for International Development (USAID), the Asian Environmental Compliance and Enforcement Network (AECEN) and the Supreme Court-Program Management Office to exchange views on the role of the judiciary on environmental adjudication, to strengthen the role of the “green” benches and to establish international linkages with counterpart judges and courts in Asia.

A Multi-Sectoral Consultative Workshop on the Manual/Benchbook and Training Design for Green Courts was held in 2008 to discuss the format of the environmental manual that will be most useful to the judges and practitioners; and to design an enhanced environmental training program.

In 2008, PHILJA organized a number of activities that provided participants with an overview of the environmental laws pertaining to air and water pollution, solid, hazardous and toxic waste management and mecha-
nisms for their implementation; and discussed the application of specific aspects of evidence and other remedies on environmental cases. These activities included the Roundtable Discussion on Strategy for Support to Environmental Courts, the Seminar-Workshop on Capacity Building on Environmental Laws and Procedures for Lawyers of the Department of Environment and Natural Resources, and the Seminar-Workshop on Managing Environmental Cases.

In 2009, it held the Forum on Environmental Justice: Upholding the Right to a Balanced and Healthful Ecology.

In 2010, it held the workshops on Multi-Sectoral Capacity Building on Environmental Laws and the Rules of Procedure for Environmental Cases to acquire knowledge and demonstrate understanding on the basic environmental laws, rules, regulations, administrative processes and court-related rules of procedure for environmental cases.

In 2011, a Resource Persons Discussion Workshop on the Capacity-Building Seminars for Environmental Law and the Rules of Procedure for Environmental Cases was held to discuss the topics to be included in training programs as well as the standard contents and flow of these topics.

**Shari’a Law**

In 1999, **PHILJA** conducted the Seminar for Shari’a Court Judges and Clerks of Court on Philippine Law to acquaint participants with the different areas of Philippine Law and to familiarize them with legal issues and problems and their solutions in Philippine Law.

The Seminar on Shari’a, Indigenous and Local Justice Systems was held in 2005 to know the state of the local modes of alternative dispute resolution in the context of the national legal system and to arrive at a shared understanding of how different justice systems and mechanisms operate in the communities of Internally Displaced Persons (IDP).

**PHILJA** organized in 2007 the Orientation Seminar-Workshop on Comparative Analysis Between the Family Code and The Code of Muslim Personal Laws to discuss the significant distinctions between the two laws.
Publications

In order to complement the capacity-building programs, PHILJA develops handbooks, course notes, compilations of laws, rules and regulations, and other multi-media tools for the participants.

The *Training Manual on Gender Sensitivity and CEDAW* (2007) aims to make more members of the judiciary gain a deeper understanding of women's human rights under CEDAW that would in turn be applied and reflected in court decisions and issuances.\(^{28}\)

The *CEDAW Benchbook* (2008) explains how jurisprudence has helped in the realization of women’s human rights and how it can further do so as part of state obligations under the CEDAW. It is a resource material for those interested in the application of CEDAW in the Philippines by providing a snapshot of successful and failed experiences, and how to work towards creating a legal system that offers a better understanding, and complete protection, of the rights of women.\(^{29}\)

The *Anti-Trafficking in Persons Benchbook for Judges* (2009) aims to provide information on the national and global contexts of trafficking and update the knowledge of judges on the provisions of the anti-trafficking law (RA 9208) and other related laws.

The *Participants and Facilitators Handbook on Competency Enhancement Training for Family Court and Single Sala Judges & Personnel Handling Sexual Abuse and Commercial Sexual Exploitation Cases* (2009) gives specific instructions as to what participants have to do during the training.


The *Helpbook on Human Rights Issues: Extralegal Killings and Enforced Disappearances* (2011) focuses on state responsibility, human rights and humanitarian law, the doctrine of command responsibility, extralegal killings (ELK) and enforced disappearances (ED).

The *Access to Environmental Justice: A Sourcebook on Environmental Rights and Legal Remedies* (2010) presents the remarkable array of environmental law and principles that enshrine the rights of the present generation
and its posterity to a more livable and sustainable place on Earth. It likewise provides the remedies available to ordinary Filipinos seeking redress for actual damage arising from an environmental hazard as well as the immediate recourse on any species of life.\(^{30}\)

The *Capacity Assessment Report on Environmental Justice* (2010) provides an evaluation of the roles and responsibilities of the pillars of justice to execute and implement the provisions of the Constitution and environmental laws.\(^{31}\)

The *Laws, Rules and Issuances on Environmental Cases* is a special publication of PHILJA that provides courts, especially Environmental Courts, and other pillars of the Criminal Justice System with a helpful reference on laws, rules and issuances on environmental cases.\(^{32}\) Likewise, the *Laws, Rules and Issuances for Cases Involving Family, Domestic Relations, Women and Children* provides courts, especially Family Courts, and other pillars of the Criminal Justice System with a helpful reference on laws, rules and issuances for cases involving family, domestic relations, women and children.\(^{33}\)

**Participants**

In line with its mandate, PHILJA’s core programs serve justices, judges, court personnel, lawyers, and aspirants to judicial posts. From 2000, it was able to train or reach out to 27,667\(^{34}\) participants on human rights-related trainings and other activities.

PHILJA’s special focus programs, on the other hand, cater to judges, court personnel and other stakeholders. To date, 21, 695\(^{35}\) participants attended its human rights-related trainings and other activities under these programs.

A number of the PHILJA’s special focus programs are multi-sectoral in approach. As aptly put by Justice Ameurfina A. Melencio Herrera, PHILJA’s Founding Chancellor Emeritus, when she addressed the participants of the Asian Justices Forum on the Environment in 2007:

> The training programs will continue to be multi-sectoral to include prosecutors, [officials of different] government agencies, [members of the law] enforcement agencies, [members of] people’s organizations, and public interest lawyers; as our experience has been that this approach is more effective in the interaction of participants leading to a better understanding of each other’s viewpoints on environmental protection.\(^{36}\)
PHILJA receives full support from the Supreme Court by guaranteeing the participation of judges and court personnel in its trainings and other activities. The same is true with the quasi-judicial, legislative, and executive agencies, and other stakeholders.

The World Bank noted in its Judicial Sector Study in 2000 that: “[PHILJA] achieves international standards in that it supports judicial independence through a judicial majority and it is representative of the various courts it serves.”

**Approach to Trainings/Methodologies Used/Training Modules**

PHILJA’s trainings and other activities have always been trailblazing. Participatory methodologies have always been employed: workshops, group exercises, role-plays, moot court, immersion programs. The traditional lecture format is made more engaging with the use of multimedia presentations. A number of forums were simultaneously held in various parts of the country through the use of video conferencing to reach wider audience.

Time is also provided for sharing of knowledge among participants through group discussions, plenaries and forums.

These trainings and other activities are periodically reviewed to provide the best and the current trends and developments on the topics involved. Curriculum content covers both legal and nonlegal topics.

PHILJA has a Corps of Professors as its official instructional force. These professors are all authorities in the various fields of law and judicial management.

It must be noted that a number of the PHILJA’s special focus programs are implemented in response to requests received from development partners, agencies, and non-governmental organizations (NGOs). The Seminar Workshop on Capacity Building on Environmental Laws and Procedures for Lawyers of the Department of Environment and Natural Resources held in 2008 is an example.

PHILJA’s Academic Affairs Office (AAO) and the resource persons design the program content and methodologies, which are at times based on training needs analysis (TNA).

A number of the PHILJA’s trainings and other activities have produced training manuals (such as the manuals on gender sensitivity and CEDAW,
and on rape) and helpbooks (such as those on CEDAW, anti-trafficking, and human rights in general).

The 2001 Year-End Report of PHILJA notes that:

The substantive quality of the programs, the expertise of [PHILJA] lecturers, and the continuing assessment and improvement of the curricula, contributed to [their] consistently high rating by participants ... Also, the participants graded ... most favorably ... the educational experience, the format, the methods, the choice of thematic programs, including the working teams assigned.40

PHILJA’s contribution in uplifting judicial competence to global standards has also been recognized by international institutions. The World Bank’s 2000 Judicial Sector Study has noted PHILJA’s independence while international conferences of judges have acknowledged PHILJA’s standards in judicial education. The Commonwealth Judicial Education Institute Inaugural Meeting in Nova Scotia in Canada last December 2001, for example, commended PHILJA for having the “most advanced and sophisticated structure of judicial education.”41

Conclusion

The relative success of PHILJA’s human rights education offerings is a function of availability of resources, competence of resource persons, and the multi-disciplinary approach to the programs.

PHILJA’s track record in delivering project-based programs through donor grants and the efficient compliance with judicial education standards has gained the trust and confidence of partners and stakeholders. In fact, PHILJA’s experience is being shared within the region and worldwide to this date.

PHILJA utilizes optimal evaluative tools to measure the behavioral patterns of judges and court personnel as well as their respective outputs through decisions and policies that reflect their enhanced knowledge and skills. But they are applied on per activity basis. Thus an important task remains, i.e., the undertaking of a major impact assessment of judicial education in order to measure the qualitative impact of all PHILJA’s offerings.
This will further contribute to enhancing PHILJA’s capacity to ensure judicial excellence in the coming years.

Endnotes

1 Establishment of the Philippine Judicial Academy, Administrative Order No. 35-96, 12 March 1996.
2 An Act Establishing the Philippine Judicial Academy, Defining its Powers and Functions, Appropriating Funds Therefor, and for Other Purposes, Republic Act No. 8557, 26 February 1998.
3 Ibid.
5 Ibid., page 8.
6 Ibid., page 17.
7 Ibid., page 22
8 Ibid.
9 Ibid., page 24.
10 Ibid., page 28.
11 Ibid., page 31.
12 Ibid.
13 Ibid., page 32.
14 Ibid., page 34.
15 Multi-sectoral refers to different people and institutions related to the justice/legal system including judges, prosecutors, officials of government agencies, members of law enforcement agencies, members of people’s organizations, and public interest lawyers.
17 Ibid.
18 Supra note 16, page 2 (citing Supreme Court Information Office, A Conspiracy of Hope: Report on the National Consultative Summit on Extrajudicial Killings and Enforced Disappearances, 1 [2008]).
19 Ibid.
21 Supra note 16, page 4, citing Karapatan, ibid., page 17 [2010]).
22 Supra note 16, page 9.
23 The writ of amparo is an order of the court protecting persons from violation or any threat of violation of the right to life, liberty and security. The rule on the writ of amparo defines the petition for the issuance of this writ in the following manner:
The petition for a writ of amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.

The writ shall cover extralegal killings and enforced disappearances or threats thereof. (Section 1. Petition. The Rule on the Writ of Amparo, Resolution A.M. No. 07-9-12-SC of the Philippine Supreme Court, 25 September 2007. Effective 24 October 2007.)

An immediate issuance of the writ follows the filing of the proper petition and served on respondent, who is obliged to answer the writ within seventy-two hours from its receipt. Continuous and summary hearing is held. The court, justice or judge may, motu proprio or upon motion, grant temporary reliefs such as temporary protection order for the party or any member of the immediate family of the petitioner; inspection order for the land or other property or any relevant object; production order for any documents, papers, etc. or objects in digitized form which constitute or contain evidence relevant to the petition; or witness protection order for the protection of witnesses.

24 Similar to the writ of amparo, the writ of habeas data is meant to protect persons from violation or threat of violation of their right to privacy in life, liberty or security. Upon the filing of the petition, the court, justice or judge shall immediately order the issuance of the writ if on its face it ought to issue. The hearing on the petition is summary although the court, justice or judge may call for a preliminary conference to simplify the issues and determine the possibility or obtaining stipulations and admissions from the parties. The judgment may result into (a) denial of the privilege; or (b) court enjoining the act complained of; or (c) order the deletion, destruction, or rectification of the erroneous data or information and grant of other reliefs as may be just and equitable. The writ of habeas data issued is enforceable anywhere in the Philippines. [The Rule on the Writ of Habeas Data, Resolution A. M. No. 08-1-16-SC of the Philippine Supreme Court, 22 January 2008. Effective 2 February 2008.]


26 The following are the PHILJA trainings and other activities focused on women and children:

- Video Production on Trials Involving Children (1999)
- Workshop on Video-Conferencing in Trial Cases Involving Testimony of Children (1999)
- Gender Sensitivity Training Programs (1999-2000)
- Training for Family Court Judges (2000)
- Training for Family Court Judges and Social Welfare Officers (2001)
- Seminar-Workshop for Court Social Workers (2001)
- Capacity Building for Rape Case Management (2002)
• Tele-Video Conference on Psychological Incapacity and Capacity of the Child (2002)
• Capacity Enhancement Training for Family Court Judges and Personnel in Handling Child Abuse Cases (2006)
• Production of six Video Training Modules on Improving Judicial Proceedings Involving Child Sexual Abuse/Exploitation Cases (2006)
• Seminar-Workshop on Discernment (2007)
• Series of Competency Enhancement Training (CET) for Family Court Judges and Personnel in Handling Child Abuse Cases and Trafficking Cases (2008-2011)
• Seminar-Workshop on CEDAW Gender Sensitivity and the Courts for Justices, Judges and Court Personnel (2006-2011)
• Seminar-Workshop for Members of Committee on Decorum and Investigation (2008)
• Discussion Sessions on Gender Equality and CEDAW (2008)
• Regional Multi-Sectoral Seminar Workshop on Improving Access in Family Courts (2008-2009)
• Forum on Children in Conflict with the Law: Creative Partnership among the Pillars of Justice and NGOs (2009)
• Seminar-Workshop on Sextortion Toolkit Development/Final Validation of Sextortion Kit (2010)

27 A single sala means that only one lower court branch exists in one locality.
31 PHILJA Annual Report (2010), page 60.
32 Ibid., page 66.
33 Ibid.
34 Approximate total number of participants collated from the data provided by PHILJA’s Academic Affairs Office. Several program reports do not mention the number of participants.
35 Ibid.

37 Supra note 4, page 2.

38 Supra note 4, page 70.

39 Supra note 4, page 9

40 Supra note 4, page 71.

Raising the Standard of Ethics and Human Rights Among Anti-human Trafficking Responders in the Mekong Region

Lisa Rende Taylor* and Melinda Sullivan**

The Greater Mekong Sub-region—Cambodia, China, Lao pdr, Myanmar, Thailand, and Viet Nam—sees diverse patterns of internal and cross-border human trafficking, for the purposes of sexual exploitation, labor exploitation, and forced marriage. Human trafficking in this region can be both internal and cross-border; highly organized and also small-scale; through both formal and informal recruitment mechanisms; and involving the victimization of men, women, boys, girls, and families. Thus, within the Mekong Region, there is not so much a single pattern of human trafficking as a range of different patterns, with diverse victim and criminal profiles.

Numbers of victims are estimated to be in the millions—for example, in 2005 the International Labour Organization (ILO) estimated that there were 9.49 million cases of forced labor in the Asia-Pacific region1, with a significant proportion thought to be in the Mekong region. This is not surprising given the position that Southeast Asia holds at the bottom of many of the world’s supply chains, from frozen seafood to garments to electronics. Internal and cross-border trafficking into the sex trade is also prevalent. The anti-human trafficking response in the Mekong region has been recognized as being relatively mature in its effectiveness and coordination, given its substantive engagement with the issue since the early-mid 1990s. Multi-sectoral engagement in combating human trafficking is common in most countries, engaging police, lawyers, social workers, educators, academia, the media, and civil society. Still, the great majority of trafficking victims remain unidentified and unassisted.

The diversity of actors engaging in the fight against human trafficking has led to numerous situations of mostly well-intentioned people, some without formal training in upholding a duty of care and protection, going

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*Lisa Rende Taylor, PhD, is the Chief Technical Advisor for the United Nations Inter-Agency Project on Human Trafficking (UNIAP).
**Melinda Sullivan was Regional Legal Coordinator for UNIAP.
into the sweatshops, brothels, and origin communities of trafficked persons to visit trafficking victims or their families—to interview, to film, to offer assistance. The positive consequences of increased awareness and action toward eradicating human trafficking are clear; however, what are the negative consequences?

Many of the negative consequences have related to violations (or, sadly, re-violations) of trafficking-affected persons’ human rights: escaped trafficking victims who had quietly returned home have been “outed” by conspicuous visits from anti-trafficking organizations to their homes; sobbing victims have been filmed and broadcast to millions without their consent during rescue operations; recovering trafficking victims have been re-traumatized by the probing interviews of researchers aiming to educate the world on how horrific and abusive the human trafficking industry can be.

This paper documents an initiative of the United Nations Inter-Agency Project on Human Trafficking (UNIAP) aiming to tackle the urgent need to raise the ethical standards of anti-trafficking responders in the Mekong region, and globally. UNIAP’s Ethics and Human Rights in Counter-Trafficking initiative launched in 2008 and aimed, in the span of three years, to measurably improve the ethical and rights-based conduct of anti-trafficking practitioners. It is an appropriate time to reflect on results, challenges, and lessons learned, which are outlined in this paper.

**Human Trafficking and Human Rights**

According to the Universal Declaration of Human Rights, all people—including trafficking victims—have fundamental rights including rights to freedom, dignity, security, and privacy. In examining this partial list of fundamental human rights, it can be seen how human traffickers and exploiters steal many of these fundamental rights away from trafficking victims. When human trafficking victims come into contact with service providers or other anti-trafficking responders, the victims may have just been under the control of a criminal who denied their rights to freedom, dignity, and decent work, leaving possible physical and/or psychological scars.

Thus, when it comes to trafficking victim protection, anti-trafficking responders should be well-prepared and properly trained to create an environment and support approach that immediately reinstates the victim’s power and position to think, act, and plan freely; to accept, decline, and
consider their life options; to rebuild his/her self-reliance; and to healthily rebuild a life with decent work, education, security, and dignity. From this perspective, it can be seen how an ethical, empowering approach to anti-trafficking work is crucial, particularly when considering the slippery slope that exists from good intentions to paternalism that, in its worst, takes forms such as de facto detention within trafficking shelters.

The Human Trafficking Situation in the Mekong region

The Mekong region compared to many other parts of the world contains diverse patterns of sex, labor, and marriage trafficking, involving the victimization of men, women, boys, girls, and sometimes entire families. Examples include:

- Trafficking of men, women, children, and families into Thailand from neighboring Cambodia, Lao pDR, and Myanmar—against a background of widespread irregular migration—for forced prostitution, domestic servitude, or forced labor into sweatshops or onto fishing boats, construction sites, plantations, or farms;
- Trafficking of children from rural to urban areas who are forced to beg, steal, or sell flowers on the streets, in Cambodia, China, Myanmar, Thailand, and Viet Nam;
- Trafficking of young Cambodian and Vietnamese girls for virginity selling; and
- Trafficking of women from rural China, Lao PDR, Myanmar, or Vietnam into the interior of China for forced marriage, sometimes leading to domestic servitude, forced labor, and/or sexual exploitation.

Trafficking also occurs from the Mekong countries to destinations further abroad, through both formal and informal channels. Men from Thailand, Laos, and Vietnam are trafficked to the US and Middle East into exploitative labor on farms and construction sites, through formal labor recruitment channels but with fraudulent contracts and deductions. Women and girls from all six of the Mekong countries are increasingly being found in forced prostitution or domestic servitude farther afield in Asia in Malaysia, Hong Kong, Chinese Taipei/Taiwan, and Japan; Chinese, Thai, and Vietnamese women and girls have been trafficked to Africa, the Middle East, the US, and western European countries for labor and sexual exploitation.
UNIAP and the Ethics and Human Rights in Counter-Trafficking Initiative

The United Nations Inter-Agency Project on Human Trafficking (UNIAP) was established in 2000 to facilitate a stronger and more coordinated response to human trafficking in the Greater Mekong Sub-region (GMS). UNIAP is managed by a regional management office in Bangkok, with country project offices in the capitals of the six Mekong countries; international and national staff include lawyers, psychosocial counselors, social scientists, and journalists. As an inter-agency project, UNIAP works closely with over two hundred fifty government, United Nations (UN), civil society (national and international non-governmental organizations [NGOs]), and private sector partners at the regional, cross-border, national, and community levels. UNIAP is the only UN/international entity in the Mekong region focusing solely on human trafficking, and comprehensively covering all four ‘Ps’: policy, prevention, protection, and prosecution. UNIAP’s *modus operandi* includes training, research, policy advocacy, and operational support to police, victim service providers, and NGOs; a focus on institutional capacity-building and coordinated systems-building spans all activities.

Over the past five years, the Mekong countries have made considerable and commendable progress in combating issues around human trafficking. A large number of activities have been implemented at local and national levels, as well as on a bilateral basis and across the four Ps. The six governments of the Mekong region also signed a memorandum of understanding in 2004, jointly committing themselves to coordinated and increasingly effective efforts to combat human trafficking. This MOU, the COMMIT MOU, is the foundation of the Coordinated Mekong Ministerial Initiative Against Human Trafficking (COMMIT Process), for which UNIAP serves as COMMIT Secretariat. Related to ethical treatment of trafficking-affected persons, in a Joint Declaration signed by the COMMIT governments in December 2007, the governments at a ministerial level pledged:

- Commitment to preventing trafficking in persons and associated harms through actions aimed at identifying and protecting trafficked persons at every point in the trafficking cycle; and to ensure that all official actions with respect to trafficked persons protect their safety, dignity and rights (Article 14); and
• Firm belief in the practical and symbolic value of an approach which places the individual and his or her rights at the centre of any trafficking law, policy or intervention (Article 18).

Thus, by the end of 2007, the political will was firmly in place to address needs for improvement in how government and non-government actors were applying rights-based approaches to trafficking-affected persons. UNIAP launched the *Ethics and Human Rights in Counter-Trafficking* initiative shortly thereafter in 2008, following a three-year plan for dissemination, capacity-building, localization, and integration as detailed below.

**Humble Beginnings in 2007-2008**

Within the UN and UNDP (through which UNIAP is administered), there is no standard internal process to review whether research, activities, or consultants meet an ethical standard in research and programming, not even for work engaging vulnerable populations. UNIAP made the decision to institute its own internal review process modeled after the Institutional Review Boards (IRBs) of academia, putting all of its research and activities working directly with vulnerable populations through a critical review process based on seven guiding principles on ethics and human rights created for counter-trafficking work. In peer reviewing the forms and process with colleagues working on human rights and anti-trafficking globally, there was a clear call to make such guidelines and tools available for the anti-trafficking public, since by this point in 2007, no comprehensive resource existed providing practical, step-by-step guidance on how to make anti-trafficking interventions more rights-respecting. The two most relevant guidelines that did exist were World Health Organization’s 2003 guidelines for interviewing trafficked women and UNICEF’s 2006 guidelines on protecting child trafficking victims, but neither addressed anti-trafficking comprehensively.

Thus, in September 2008, the UNIAP *Guide to Ethics and Human Rights in Counter-trafficking: Ethical Standards for Counter-Trafficking Research and Programming Guide* was launched in English, then soon after in the six Mekong languages. To date, nearly fifteen thousand Guides have been printed and disseminated in the seven languages, with electronic versions of the Guide available in English and the Mekong languages on the internet.
The seven guiding principles that serve as the foundation for the Guide to Ethics and Human Rights in Counter-Trafficking and all trainings are:

1. Do no harm: be compassionate but neutral.
3. Get informed consent, with no coercion.
4. Ensure anonymity and confidentiality to the greatest extent possible.
5. Adequately select and prepare interpreters and field teams.
6. Prepare referral information, and be prepared for emergency intervention.
7. Do not hesitate to help others: put your information to good use.

The Guide itself is fifty to sixty pages long (varies by language) and includes checklists, case studies, do’s and don’ts, and templates for key forms such as ethics reviews and informed consent statements.

**Dissemination and Training on the Ethics Guide**

While UNIAP worked to translate the Guide into the six Mekong languages in early 2009, standardized training curriculums were created and customized to suit a few different types of training groups: senior policy officials; operational government officials from police, justice, social work and other ministries; NGO workers and journalists; and mixed, multi-disciplinary settings. Once the Guide was translated, training materials were also translated and the first round of national-level trainings were launched in all countries, with regional legal/technical experts with a solid understanding of ethics and human rights delivering the trainings in local language (with interpretation), with all materials in local language.

UNIAP also integrated ethics and human rights training modules into existing regional anti-trafficking training curriculums, including the COMMIT Regional Anti-Trafficking Training Programme, which trains hundreds of government officials and NGO officers from the six Mekong governments plus Malaysia annually. In addition, UNIAP and partners acted opportunistically to integrate ethics training modules into other relevant national and sub-national trainings, for example trafficking victim screening trainings for
police and border guards, and shelter management and counseling trainings for shelter staff.

By 2011, many national UNIAP staff and inter-agency partners (UN and NGO) had gained significant experience being exposed to ethics trainings by UNIAP’s regional experts, and by working as co-trainers to facilitate interpretation and strengthen their own capacity. This, over time, increased the localization and spread of ethics training at the national and sub-national levels, since local anti-trafficking staff and partners were more well-versed in integrating such training and coaching on a formal or informal basis. After a first order of a few thousand Guides in 2008-2009, many thousands more had to be printed through 2011 to meet the demand for more Guides across the region from this localization spread. Nearly four thousand eight hundred Guides in the seven languages have been disseminated through training and ethic workshops as of 2011.

UNIAP ethics training programs began with a pre-test on ethics knowledge, followed by a general overview of human trafficking in the region and the country presented by UNIAP national staff, often using multimedia tools such as video documentaries showing lives and perspectives of trafficking victims to engage the group from the start, and get them thinking “in the shoes” of victims and their family members.

The ethics trainer then began the ethics and human rights presentation. The trainer invited each participant to introduce themselves and to comment on their understanding of ethics and human rights. Following this, the trainer introduced the participants to ethics and human rights in counter-trafficking, providing the participants with the Guide to Ethics and Human Rights in Counter-trafficking: Ethical Standards for Counter-Trafficking Research and Programming (‘the Guide’) in their language, walking participants through UNIAP’s seven guiding principles of ethics and human rights in counter-trafficking in detail, with discussion.

The training then focused on each of the seven guiding principles of ethics and human rights individually, providing more detailed information and guidance on each concept. Where relevant, national laws and/or policies relating to each guiding principle were presented and discussed. Use of national laws that interacted with the ethics and human rights principles in the Guide assisted the trainer to demonstrate how the concepts were applicable to the participant’s anti-trafficking activities in the local context.
Participants were provided with a copy of their national human trafficking laws or legal provisions. Participants were also provided with a copy of the UNIAP publication *Human Trafficking Laws: Legal Provisions for Victims*. Examples of laws presented to participants that interacted with the principles of ethics and human rights in counter-trafficking included laws relating to protection of privacy and identity, counseling and legal rights, provision of medical treatment, age, gender and special needs of victims, and protection of physical safety, for example:

**Protection of privacy and identity as included in:**
- Cambodia - Law on Suppression of Human Trafficking and Sexual Exploitation (2008), Article 49
- Lao PDR - Law on Development and Protection of Women (2004), Articles 25(7) and 27
- Myanmar - Anti-Trafficking in Persons Law (2005), Sections 11(a), (b) and (c); Section 16(f), and Section 19(e)
- Thailand - Anti-Trafficking in Persons Act (2008), Sections 31, 36 and 56

**Counseling and legal rights as included in:**
- Lao PDR - Law on Development and Protection of Women (2004), Articles 25(4) and 28
- Myanmar - Anti-Trafficking in Persons Law (2005), Sections 19(c) and 19(d)
- Thailand - Anti-Trafficking in Persons Act (2008), Sections 33, 34 and 35

**Provision of medical treatment as included in:**
- Lao PDR - Law on Development and Protection of Women (2004), Articles 25(8) and 28
- Myanmar - Anti-Trafficking in Persons Law (2005), Sections 16(e) and 19(f)
- Thailand - Anti-Trafficking in Persons Act (2008), Section 33

**Age, gender and special needs of victims as included in:**
- Thailand - Anti-Trafficking in Persons Act (2008), Section 33
Protection of physical safety as included in:

- Lao PDR - Law on Development and Protection of Women (2004), Articles 25(5) and 27
- Myanmar - Anti-Trafficking in Persons Law (2005), Sections 14, 16(a) and 17
- Thailand - Anti-Trafficking in Persons Act (2008), Section 36.

For each guiding principle, real case examples were presented and discussed, including situations encountered by previous training participants. The real case examples enabled participants to understand how each ethics principle might affect their work in practice. The participants were placed in groups and asked to work together to identify the ethics and human rights issue(s) highlighted in the case example, and best responses to the cases.

For a number of the guiding principles, additional training materials were used. For example, for the guiding principle ‘Do no harm: be compassionate but neutral,’ a video of a mock police interview with a child was used to demonstrate ‘bad’ and ‘good’ interview techniques. The participants were asked what they would do to improve on both the ‘bad’ and ‘good’ interview. Used at the start of the training, this video also introduced a variety of the different ethics and human rights principles that would follow. For the guiding principle ‘Anonymity and confidentiality,’ the trainer used pictures to demonstrate how confidentiality and anonymity might be protected. Participants were asked what more might be done to protect anonymity and confidentiality for the individuals in the pictures. In some trainings, examples of human trafficking reports or newspaper clippings were used to identify ‘good’ and ‘bad’ examples of protection of confidentiality in print.

Toward the end of the training, participants were engaged in role plays illustrating ethical dilemmas that occur in anti-trafficking. Participants were requested to use knowledge gained during the training to act out, with their group, what they would do in each scenario to facilitate the protection of ethics and human rights. A post-test on ethics knowledge and course evaluation marked the end of the training.

Observations and Lessons Learned

One observation and lesson learned was that receiving support from a well-known national government official with a specialized knowledge of human
trafficking was often important to the success of the trainings. Collaboration with champions within the government to raise awareness of human trafficking, human rights and ethics, and to promote the ethics training to the participants, engendered increased interest and participation from the participants.

A second observation over time was the benefit of being able to engage local experienced individuals who had previously participated in the trainings to assist with the training. These individuals provided great perspective while co-facilitating the training, being able to provide richer additional information from a local context, and assist with group work proficiently, not requiring the use of a translator.

A third lesson learned was the importance of tailoring the trainings to the particular background and profession of participants, whether they were police, researchers, journalists, or other type of anti-trafficking practitioner. This ensured that the training was relevant and of practical benefit for the participants. This was particularly important for participants who worked in human trafficking but who had little or no experience with ethics and human rights. For participants with more extensive experience with ethics and human rights, multi-disciplinary trainings were of greater benefit, allowing the analysis of challenging ethical issues from different perspectives (for example, police, lawyers, and social workers) and promoting the multi-disciplinary networking and trust-building that is so important in anti-human trafficking work.

Fourth, the more active participation and opportunities for discussion the participants were provided, the more benefit the participants appeared to obtain from the training. Training participants responded particularly well to discussion of cases and actual experiences of participants, as well as video presentations. Presenting a video at the start of the training which provided an introduction to the themes of the training enabled the participants to gain an understanding of the concepts to be discussed. Use of video presentations highlighting ‘bad’ ethics and human rights practices particularly engaged the participants and encouraged discussion without fears of offending anyone in the room.

**Evaluation Results, 2011-2012**

The shift in capacity-building efforts from the regional to the national level in 2010-2011 freed up regional resources to begin impact evaluation: have
all of these trainings and thousands of disseminated Guides really made a measurable difference in the lives of trafficking-affected persons and the way anti-trafficking responders interface with them? UNIAP began the process of follow-up with former ethics training participants in late 2010, to see if UNIAP’s ethics training had any impact on the real day-to-day operations of anti-trafficking responders who had received the training months (for some, years) ago. Participants were specifically asked how the training has contributed to improving ethical and rights-based practices in their workplans; whether they have implemented the ethical principles from UNIAP’s Guide and training in their work and/or work policy; and, whether they were able to identify ethical issues in their work that they were not previously aware of as ethical issues.

Self-reported feedback (with factual cross-checking by UNIAP local staff) was welcomed in a variety of forms, to allow for a richer, qualitative understanding of how rights-based approaches were understood, absorbed, and applied by the participants. Five examples of some of the feedback obtained are as follows, providing indications of positive results of increased capacity among anti-trafficking responders and within victim protection systems, integration of more rights-based knowledge and practice into the operational work of anti-trafficking responders, and real behavior change.

- **Police interview procedures reformed to uphold the principles of ‘Do No Harm’ and to enable referral, in Cambodia:**
  “Practically, I learnt a lot from the training, particularly a human rights base for interviewing. As a result, we reformed the team and the way to handle cases....we created a proper place to interview victims after raid and rescue [which had] not existed before I was trained. Our behavior changed in treating the interviewees based on their rights, for example, we provide them food and water if they are in need, translator if they are foreigners and they have right to answer or decline. Moreover, we would refer them to our partners for further intervention [when this was requested].”
  – Senior Gendarmerie official, Cambodia (trained April 2010)

- **Journalist reporting techniques were changed to reflect ethical principles of confidentiality and anonymity, in Cambodia:**
  “The ethics training for counter-trafficking was very useful for me....It has
been a good improvement for my profession in interviewing, particularly the sensitive cases of trafficking and abuses. In my reports, instead of giving the real name, I make up a different one so that the identity of the victim has been protected. I see how it is important to have this type of training. ...I suggest that the training should continue on a wider scale.” — Journalist for Cambodia Weekly, Cambodia (trained April 2009)

- **Social workers ensuring informed consent obtained, staff trained, and victims interviewed by appropriate staff, in Cambodia and Thailand:** “Before the training our team [work] was based on belief and habit. Consequently, interviews could happen at any time and any place. We sometimes had male staff carry on interviewing shivering girls who had been abused. However, after being introduced to the guidelines and rights-based interviews, we changed our practice. For instance, we arranged proper interview environments, asked for consent, and maintained anonymity and confidentiality. We also share our knowledge and experience with our team and counterparts on the issue.” — NGO social worker, Cambodia (trained April 2009)

“After attending UNIAP’s ethics training, I applied what I learned to provide assistance to victims of trafficking while interviewing them...[especially] being friendly, getting to know the victim, and providing snacks, fruit, water, drinks. I allow the victim to speak without any interruptions, and during the interview I try to reduce tensions in the environment. I encourage and support [the victim] by maintaining eye contact, allowing the victim to finish his/her story, and remaining neutral.” — NGO worker, Thailand (trained August 2010), who also shared photos of NGO staff conducting interviews in rural communities to document their improvements.

- **Improving shelter systems to uphold ‘Do No Harm,’ anonymity, and confidentiality:** Shelter managers in Viet Nam submitted before and after photos of changes made to their shelters after receiving ethics training, including new locked cabinets for confidential case files (previously, cabinets had no locks and glass doors), as well
as locked personal cabinets for shelter clients to be able to store their private belongings (previously, clients had no private space to call their own and no control over the storage of their keepsakes).

- **Policy makers passing on the guidelines to operational units under their stead:** “I have not directly applied what I have learned from the training to my own work, as our unit does not work directly with victims. However, the training was very informative and where possible this information is always disseminated to related officers.”—Government social development officer, Thailand (trained August 2010).

### Next Steps: Impact and Identification of Gaps and Priorities

Teasing out the longer-term impacts that could be fairly attributed to this single initiative is challenging, particularly since no specific regional situational baseline was measured. However, an attempt will be made to do an assessment in 2012 that examines three bigger-picture areas where trafficking victim rights are sometimes violated, and comparing the behavior of responders exposed to the ethics guide and training, versus those with no exposure. The overall objective will be to help anti-trafficking responders in the region, including through the COMMIT Process, collectively identify and address high-priority outstanding challenges to a rights-based anti-trafficking response. These three areas are by no means comprehensive; by prioritizing and selecting three areas, however, it provides focus and a deeper understanding on how to address these weak points, rather than trying to fix everything at once and being spread too thin. The three bigger-picture areas, or impact themes, being considered include:

1. **Trafficking victim protection systems and policies, including shelter systems and victim/witness treatment.** This impact theme will explore whether and how fundamental human rights are upheld in victim protection systems, including shelter systems—including freedom of movement, dignity, and right to family. *De facto* detention of victims in trafficking shelters and examining whether victims are forced or compelled to serve as witnesses in protracted
criminal proceedings are two urgent issues to be critically examined here.

2. **Informed consent and privacy for trafficking-affected persons in the media and public awareness raising activities.** This impact theme will survey human trafficking stories in the print and broadcast media as well as awareness-raising activities involving trafficked persons, to ensure that victims are participating with full informed consent, with no harm done and identities concealed (unless, in the case of adults, they wish to reveal their identities). Victim participation should be productive and empowering, not tokenistic or exploitative.

3. **Impacts in source communities.** This impact theme will focus on positive and negative effects that government and non-government responders have in trafficking origin areas and source communities. Respect for privacy and confidentiality of trafficking-affected persons within their communities will be explored here, as well unintended consequences leading to stigmatization or other socially damaging outcomes for trafficking-affected persons.

**Conclusion**

While a review of a three-year UNIAP initiative aiming to improve ethical conduct and rights-based approaches among anti-trafficking responders in the Mekong region did generate some positive indicators of success, much more work needs to be done by the anti-trafficking community. The guiding principles of ‘Do no harm,’ ‘Get informed consent, with no coercion,’ and ‘Ensure anonymity and confidentiality to the greatest extent possible’ in particular are seen to still be violated in mass media and other public awareness-raising; in police stations and courtrooms; and in victim protection services alike.

Traffickers and exploiters of sex, labor, and marriage trafficking victims rob trafficking victims of their fundamental rights to dignity, freedom, and security. The anti-trafficking community should be focusing its energies on immediately reinstating dignity, freedom, and security for trafficking-affected persons— with freedom not being unnecessarily sacrificed in the name of security, as it sometimes is. Government and non-government commitment to improving the ethical conduct of anti-trafficking responders would
be a strong step in the right direction, with a focus on truly appreciating the meaning and value of a rights-based approach.

**Endnotes**


5. Please see www.no-trafficking.org/init_ethics.html.

6. The MTV EXIT documentaries proved very effective and well-received by many ethics training participants.

Human Rights Training for Journalists in Bangladesh

Drik Picture Library

Drik is a premier visual media communication organization that has steadfastly been with the people of Bangladesh for over two decades—teaching, informing, influencing and changing their lives. Established in 1989, Drik has been and is driven by a need to change the identity of Bangladesh as an icon of poverty, while challenging the western hegemony in photography. “The audacity of it wasn't an issue. We knew the rules of physics could be bent,” says Shahidul Alam, Managing Director and founder, talking about the setting up of a world-class photo library in the hinterland of photography. It was not that he was not aware of the challenge — but Alam, a pugnacious critic and activist wanted change desperately — a change in how Bangladesh’s story was being told and controlled by the Western media, a change and opportunities for his marginalized people.

This core vision of his has been the singular motivating force for Drik. The goal still is to work towards making Bangladesh a country where people can exercise their right to express dissent peacefully, a country where information will flow freely and knowledge and skills needed for individuals to attain their full potential is available to them. This goal seems to be a gigantic task considering the long list of human rights issues that plague the country — violence against women and girls, arbitrary arrests and detentions, excessive use of force, extrajudicial killings, torture, death penalty, impunity and lack of rights for indigenous peoples to name a few. But Drik has never been shy in taking on challenges and has stayed unbridled in its politics against all odds. Its programs and interventions have successfully informed and educated the public, making issues that were opaque more transparent.

Programs and Interventions

Drik was launched on 4 September 1989 as Drik Alokchitra Granthagar. The Sanskrit word Drik means vision, inner vision, and philosophy of vision. That vision of a more egalitarian world, where materially poor nations have a say in how they are represented, is what Drik aspires to in its work.
Programs and initiatives Drik has undertaken over the years have successfully drawn attention to many human rights issues that have impacted on the marginalized communities in Bangladesh, cause both by the callousness of the state and society, but also due to foreign intervention. When HIV/AIDS was a taboo subject Drik went on to portray sensitively the suffering, and the courage of many. Stories about sex workers, migrant labor, child marriages, homosexuality and a plethora of subjects that had either been unsaid, or presented through the eyes of the privileged has led to a more nuanced and sensitive understanding of subaltern lives.

Currently Drik is establishing a network of rural visual journalists who through their work will be able to bring multimedia stories from the districts on governance, human rights and other related issues to the attention of the world. Eleven journalists were trained in November 2011 and twenty more are undergoing training in March 2012. Their stories will be distributed by DrikNews (www.driknews.net) and the Banglarights (http://www.banglarights.net) websites. The goal is to extend and build a strong network of over sixty local journalists who will report directly from rural Bangladesh.

The Crossfire exhibition on extra-judicial killings held in 2010 drew worldwide attention to the extra-judicial killings carried out by the Rapid Action Battalion (RAB)—a sinister black-clad group formed seven years ago from members of Bangladesh Police, Army, Navy and Air Force. RAB was (and is still) carrying out extra-judicial killings and torture of people in custody. There was a drop in incidents soon after the exhibition but killings and disappearances continue with the numbers on the increase again. The powerful visual message of the Crossfire Exhibition will be used again in 2012 focusing on audience engagement both nationally in Bangladesh and an exhibition at Queens Museum, New York, U.S.A. The goal is to inform and strengthen grassroots communities and gather international support to end extra-judicial killings in Bangladesh.

From the early nineties, Drik Picture Library has been collecting, listing, and recording the scattered visual fragments of 1971 the year of liberation for Bangladesh, as well as oral records, documents and physical artifacts. Drik made several attempts to piece together the scattered history with an initial publication on Bangladesh’s 25th anniversary in Drik’s 1996 calendar, an exhibition in the first Chobi Mela in 2000, followed by the publication of a book and a film on refugees in 2011, titled “The birth pangs of a nation.”
In February 2012, Drik initiated “Archiving 1971” a program to collect oral, textual and visual resources to establish a one stop repository of this historical event. The aim is to bring together a team of researchers, social scientists, historians, archivists and other professionals to assemble definitive archives of the country. The ten-year plan includes not only gathering the material from all over the world but also economic resources necessary to form permanent physical archives. This will enable academics, researchers and other interested people to conduct rigorous analysis and to draw inspiration from the repository.

In 1992, Drik partnered with Autograph in London to set up a collective of women photographers and ran a workshop with British photographer Poulomi Desai. Their photographic work “Seeing with another eye” (Onno Chokhe Dekha) explored issues of gender and representation and analyzed the position of women in Bangladeshi society. The resulting exhibition from this workshop, curated by Shahidul Alam, toured Bangladesh, U.K. and France. Several members of this collective have gone on to build successful media careers.

Long before social responsibility became a buzz word in the corporate sector, Drik was out there challenging social inequality. In a pioneering exercise titled “Out of Focus,” a group of children from working class families of Mirpur were trained in 1994 by Alam with pinhole and simple conventional cameras to take photographs and tell the story of Bangladesh as they saw it. They are no longer children. Several work in Drik, and most have worked internationally with Drik’s regional partners. They have held major international exhibitions, successful television and radio broadcasts, films that have been nominated for awards in international festivals and publications in mainstream media. Four of the Group were in the “Mukthok Khobar” Bangladesh’s first children’s news program on television. One won the first Emmy from Bangladesh.

The Bangladesh human rights website (http://www.banglarights.net) was set up in 2001. This was not viewed favorably by the government but Drik tenaciously held on to this independent platform for media professionals and activists. This initiative trained journalists, provided a web portal and built a bulwark of media professionals and human rights activists to champion principles to address social inequalities and domination at national and international levels.
The need for Bangladeshis, who value rights and freedoms, to work in concert within and across borders remains a vital issue as human rights abuses escalate. Even more so now, as those who challenge abuse of power are persecuted. The initial bulwark set up needs strengthening now to keep the spotlight on unresolved human rights issues. Educating and strengthening the skills of media makes them significant info-intermediaries that apprise people about their rights to challenge injustice. Drik sees this as a continuation of the banglarights.net journey and one that needs to be travelled, to lessen the pain and suffering of the majority of this world. However, the site became dormant due to lack of funds but is now being revived. The stories resulting from this human rights training are on this site and is under construction now.

The term Majority World entered the lexicon of Drik as Alam rejected the West’s “Third World” label for the majority of humankind. Majority World defined the community in terms of what it has (the cultural, intellectual social wealth of the nations) rather than what it lacks.

The online image agency Majority World came into being in 2007. It is a unique online photo-library, whose mission is to support, develop and promote indigenous photographers from Africa, Asia and Latin America. The portal http://www.majorityworld.com gives 24/7 access to quality images and opportunities to commission work from leading photographers and agencies from these countries.

The Proposed Intervention

The proposed intervention to address this need to improve reporting on the human rights issue is a human rights training course for urban journalists in Bangladesh. Drik held this training course on 19 July to 11 August 2011 in Dhaka, Bangladesh in partnership with Internews (www.internews.org) an international non-profit organization whose mission is to empower local media worldwide to give people the news and information they need, the ability to connect and the means to make their voices heard.

The aim was to make this training a pilot program, and the course manual compiled to be used to replicate the training in other cities in Bangladesh.
**Goal**

The goal was to train and build a group of journalists with a sound understanding of the elements of human rights laws, reporting and other relevant skills to be able to raise awareness and draw attention of the public to human rights issues in the country.

Subsumed in this goal was the wish that the participants would be motivated to contribute regularly to the Banglarights (http://banglarights.net/) and Driknews (www.driknews.net) websites.

The specific objectives were to train participants to:
- investigate and report on human rights issues
- gain a sound understanding of the concept of human rights, the historical background and the legal basis of human rights
- be better able to appropriately identify and report on human rights issues in Bangladesh
- expand their personal and technical skills to investigate and cover human rights issues
- develop appropriate sensitivity to issues of “human concern” and how these might be handled in Bangladesh
- understand risks that they might be exposed to, and learn how to minimize risks
- acquire “subject specific” knowledge in chosen areas of human rights (e.g. women’s rights, children’s rights, garment worker’s rights etc).

**The Course Structure**

The course was envisaged as a participatory learning process using creative, interactive teaching methods, which offer the best hope for securing the active longtime involvement of the program participants. The course design included presentations and discussions by guest lecturers in addition to the trainers; round table discussions; working groups; case studies; problem-solving/brainstorming, simulation/role-playing, and practical exercises (including drafting).

Twenty journalists initially registered for the course but only sixteen followed the course to completion.
The sixteen participants (fifteen males and one female) represented several media sectors:
- Print media – nine participants
- Electronic media – three participants
- Legal aid non-governmental organizations (Odhikar and Bangladesh Legal Aid and Services Trust [BLAST]) – two participants
- Freelance photojournalist and Reporter – two participants.

The first part of the course from 19-21 July 2011 was instructional and used creative, interactive teaching methods, including presentations and discussion by guest lecturers, as well as open discussions with human rights defenders activists and victims.

During the second part of the program, the participants undertook an assignment on human rights under the supervision of trainers and mentors. The final part of the training was a review program on 8-9 August 2011 where the work produced by the participants during the assignment period was openly evaluated by the trainers, mentors and the participants themselves.

A well-attended awards ceremony was held on the 11 August 2011 with Dr. Mizanur Rahman, Chairperson of the National Human Rights Commission (NHRC), Bangladesh, as the chief guest and Mr. Nurul Kabir, editor of New Age Bangladesh newspaper, as the guest of honor.

One participant each from electronic, print and photography sections made presentations. See Annex A for the list of the training course outputs.

**Course Content Outline**

The content of the course is outlined below.

**I. Day One**

The first day had the following course content outline:

*Introductory Session:*

This session consisted of introduction of participants, resource persons and Drik staff; review of the participants’ expectation; and the setting of rules of the whole training period.
The objective of this session was to create a friendly participatory learning environment, review expectations of the participants and give them an opportunity to design a set of rules for the training period.

**Session 1: Understanding the Human Rights Concept and the Underlying Principles**

This session covered the following subjects:

- History of human rights discourse
- International Bill of Rights (Universal Declaration of Human Rights [UDHR], International Covenant on Civil and Political Rights [ICCPR], International Covenant on Economic, Social and Cultural Rights [ICESCR])
- Human rights and State responsibility
- Human rights violation vis-à-vis Crime.

Using the film ‘The Story of Human Rights,’ the following ideas were introduced and explained:

- 3R rights framework – Rights, Recognition and Responsibility
- main State responsibilities - Respect, to Protect and to Fulfill citizens’ rights.
- the difference between a human rights violation and a crime.

**Session 2: Role of Media in Social Justice**

This session covered the following subjects:

- The role of the journalists
- The need for human rights journalism
- Scope of human rights journalism.

Brainstorming, lecture and discussion activities were held in this session.

**Session 3: Journalists as Human Rights Defenders**

This session covered the following subjects:

- Changing role of journalists in the new social media age
- Introduction to citizen journalism, blogs, stories behind stories, i-reporting, etc.
- Importance of a strong human rights network
• Opportunities for making a change, reaching out via the banglarights.net. Lecture and discussion were held in this session.

**Session 4: Practical Experience of a Human Rights Defender**
In this session, participants heard about the experience of a social activist and a human rights defender and shared how the work transformed him as an activist or defender, and explained the risks he faced and his survival tools and skills.

The first day ended with a summary of the day’s proceedings and evaluation.

II. Day Two
The second day had the following course content:

**Introductory Session**
The training session on the second day commenced with a recap of previous day’s learning.

**Session 5: Right to Information in the International Human Rights Framework**
This session covered the following subjects:
• UDHR and ICCPR
• International treaties that guarantee freedom of information
• International principles and standards on right to information (RTI) law
• Global status of RTI laws
• Status of RTI laws in the member-countries of the South Asian Association for Regional Cooperation (SAARC)
• Work and principles of United Nations (UN), European Union (EU), Commonwealth, Article 19, Committee to Protect Journalists (CPJ), Amnesty International, etc.

**Session 6: Right to Information Act and the Rules of 2009, Bangladesh**
This session dealt with the salient features of the Right to Information Act.
Session 7: Understanding the Domestic Legal Framework with Reference to Journalism

This session covered the following subjects:
- Laws relating to contempt of court and defamation
- Legal remedies including protection of fundamental rights (Writ)

Bangladesh laws that hinder or help the work of the journalists were discussed, focusing on practical case studies on the strength and weaknesses of the legal protection mechanisms including the higher judiciary.

Session 8: Experience of a Survivor Encountering the Legal Framework

The second day ended with a summary of the day’s proceedings and evaluation.

III. Day Three

The third day had the following course content:

Session 9: Human Rights Reporting

This session covered the following subjects:
- Elements and ethics of human rights reporting
- Necessary skills and methods for human rights reporting.

Session 10: Reporting from the Survivors Perspective

This session covered the following subjects:
- Understanding survivors plight
- Recognizing diversity, upholding plurality.

In this session, participants were taken through a practical exercise of transforming a crime report to a human rights report.

Session 11: Practical work: Preparing a Human Rights Report

The objective of this session was to give guidance to the participants to prepare for their print, audiovisual or photography assignment with a narrative portion of five hundred to six hundred words. This session also gave the participants an opportunity to review their existing work in the light of what they had learned about human rights reporting.
The third and last day ended with a summary of the day’s proceedings and evaluation.
See Annex B for the details of the course program.

**Assessment of strengths /weaknesses**

The lead trainer’s and Mentor’s/advisor’s assessment of the trainees based on their participation and work produced:

- The group was very enthusiastic and had a positive energy. All the participants were keen on learning and attended sessions regularly. Most were punctual; actively participated by asking questions to clarify issues and worked keenly on their assignments.
- All the trainers used powerpoint slides and the participants sometimes got tired of this. They were hungry for more practical real life examples. However, the course had incorporated several who spoke from their practical experience and illustrated points with real life examples.
- Handouts were popular as many found them useful.
- Although heads of departments of the news agencies had agreed to release journalists for this course there were times when this promise was broken. However, many or all stayed till the sessions ended at 5 p.m.
- Grasp of theoretical knowledge was good but some weaknesses were highlighted in the following feedback received from the mentors for the practical work.
- Except for one photographer, no one supplied meta data (This is information that needs to be inserted into a digital photo file that will identify who owns it, copyright and contact information, what camera created the file, along with exposure information and descriptive information such as keywords about the photo)
- No one sequenced the photographs into an order that would present the story in the best light
- Very few used personal quotes
- No one followed 5Ws and H for captions
- No one provided proper titles for their photographs
- No one provided references to source
- Music at the beginning in the video and end was not acceptable
- Script of video was weak.
Overall Course Evaluation

The training course met the aim of training and building a group of urban journalists with a sound understanding of the elements of human rights laws enabling them to effectively and accurately draw attention to human rights issues.

The successful completion of the training of journalists also contributed significantly to Drik’s core vision of working toward making Bangladesh a country where people can exercise their right to express dissent peacefully, a country where information will flow freely and knowledge and skills needed for individuals to attain their full potential is made available to them.

The training course included pre- and post-training evaluative exercises. At pre-training level, all participants submitted a portfolio of written articles on human rights issues/photo stories, video documentaries, and responded to a questionnaire. This enabled the trainers to gauge the knowledge and skills of the participants and to tailor his/her course to their particular educational needs.

Post-course questionnaires/articles and evaluation sessions allowed trainees to gauge what they have learned. Feedback from participants will be used to modify and improve the courses and materials for subsequent training.

The course needs to be replicated for training in human rights reporting for the photojournalists of the Regional Network of Visual Journalism (RVJN) of Drik.

Recommendations for future direction/course content

Based on the experience of conducting this course Drik’s recommendations are to:

- Hold the course at a location away from city, making it residential to enable participants to concentrate on the work and assignments better.
- Try to get more female participants.
- Include sessions on writing and building report writing skills, and caption writing skills.
Concluding Note

It is ironic that political parties the world over have universally abandoned their support for social justice, while continuing to flag it in their rhetoric. The disregard for human rights is damaging in all societies, but it is specifically peoples who are vulnerable who suffer the most.

Drik has been campaigning for the rights of the disenfranchised since 1989. As such it has a long-standing reputation and track record in standing up for the oppressed. It was this credibility of Drik, which made this workshop possible.

Drik is in a unique position where it is not affiliated to any political, corporate, media or donor organization. Nor is it perceived as a threat by human rights non-governmental organizations, which often get involved in turf wars. This provided the acceptability of this workshop where participants from ‘competing’ human rights organizations and media houses, not only responded to Drik’s call, but worked together in collaborative teams to report on human rights issues, which they had never before done.

Drik’s skills as a communication organization and its in-house production expertise also came to the fore, as the rapid turnaround and dissemination of media products simulated real life situations that journalists and activists might face though they are often prevented from reporting on them because of the commercial and political pressures that media houses operate under. As such this became a testing ground for many frustrated journalists and activists who eventually found an outlet for stories they felt needed to be told. Because of its wider network and its international presence, Drik was also able to place the Bangladeshi situation in a broader geopolitical setting, and was able to work with the participants in developing strategies at both national and international levels to deal with human rights reporting.

However, one must be careful not to create expectations that cannot be met. It is important, now that both the Banglarights.net website has been re-activated, and committed journalists and human rights activists have
been given the tools with which they can address social inequality, that follow up programs are put in place so that the stories that are unearthed can be widely disseminated and can result in lasting reform. These are issues that the organizers, Internews and Drik, both need to take on. It is only then that the workshop will have been meaningful.
Annex A

Training Course Outputs

Video:
- Video of the Human Rights Training

Press Release:
- Journalists Strengthen Skills to Uphold Human Rights in Bangladesh
- Stories produced in English (http://banglarights.net)
- Lower income groups cry for safe drinking water - Rafiqul Islam
- Constitutionality of mobile courts during hartal (strike) - Md. Raisul Islam
- Sourav
- Report on ‘Human Rights Violation in police custody’ - Custodial torture - Mohammad Ali
- Bangladesh Transport skids on workers’ rights - Musfequr Rahman
- Construction Workers - Rakib Ahmed
- Violation of health rights: needs progressive realization right now - Prito Reza
- A Deadly Game - Monirul Alam
- Human Trafficking: A Modern Slavery - Khairul Kuader
- Felani is not the end... - A M Ahad

The Training Manual.
Annex B

Course Content Outline

Day 1

- Registration of participants
- Opening and Introduction
- Welcome and clarifying objectives - Shahidul Alam, Drik
- Video Conference with Omar Barghouti
- Keynote address by the Special Guest- Dr. Mizanur Rahman, Chairman NHRC

“With Bangladesh gaining geopolitical importance, many forces are at play and human rights violations have dramatically escalated with perpetrators operating with impunity. Trained journalists will play a vital role in challenging the abuse of power,” said Shahidul Alam, Managing Director of Drik at the commencement of the course.

Omar Barghouti, a Palestinian researcher, commentator and human rights activist speaking online at the opening session shared his experience, focusing on the special role accurate, fair and professional reporting and analysis plays as a catalyst in upholding human rights and supporting the peaceful resistance to human rights abuses, as in the BDS (boycott, divestment and sanctions) movement (see www.BDSmovement.net for more information).

- Introductory Session: Ice breaking and getting acquainted (60 min.)
- Introductions –participants, resource persons and Drik staff
- Review of participants’ expectations
- Setting rules

Facilitator: Lead trainer Sanaiyya Faheem Ansari

Objective: To create a friendly participatory learning environment, review expectations of the participants and give them an opportunity to design a set of rules for the training period.

Description: Games, storytelling, small group discussion and brainstorming.

Session 1: Facilitator: Sayeed Ahmad, Expert-NHRC/UNDP
Subjects covered:
- Understanding the Human Rights Concept and the Underlying Principles (60 minutes)
• History of Human Rights Discourse
• International Bill of Rights (Universal Declaration of Human Rights [UDHR], International Covenant on Civil and Political Rights [ICCPR], International Covenant on Economic, Social and Cultural Rights [ICESCR])
• Human Rights and State Responsibility
• Human Rights Violation vis-à-vis Crime

The facilitator introduced and explained:
• 3R rights framework – Rights, Recognition and Responsibility (20 min.)
• Main State responsibilities - Respect, to Protect and to Fulfill citizens’ rights.
• The difference between a human rights violation and a crime (15 min).

Session summing up by the facilitator. (5 min.)

Session 2: Facilitators — Lead trainer and Shahidul Alam
Role of Media in Social Justice (45 min.)

Subjects covered:
• The role of the journalists
• The need for human rights journalism
• Scope of human rights journalism

Method: Brainstorming, lecture and discussion.

Session 3: Facilitator: Shahidul Alam
Journalists as Human Rights Defenders (90 min.)

Subjects covered:
• Changing role of journalists in the new social media age.
• Introduction to citizen journalism, blogs, stories behind stories, i-reporting etc.
• Importance of a strong human rights network.
• Opportunities for making a change, reaching out via the banglarights.net.

Banglarights is an independent web portal, which exposes and challenges discriminations and violations of human rights. This portal (banglarights.net) upholds human rights reforms both in Bangladesh and in the international arena, in support of
women, children, and marginalized communities resisting various forms of oppression.
(45 min.). The facilitator discussed with the participants opportunities available to journalists through the banglarights website.

Method: Lecture and discussion

Session 4 Shawkat Milton, Senior Reporter: The Asian Television Network (ATN) Bangla

Subject covered:
- Practical Experience of a Human Rights Defender (45 min.)

In this session, participants heard about the experience of a social activist and a human rights defender and shared how the work transformed him as an activist or defender, and explained the risks he faced and his survival tools and skills.

Closing Session of the Day (30 min.)
Summary of the day and wrap up
Daily evaluation (15 min.)

Day 2

Introductory Session: Recap of previous day’s learning (30 min.)

Session 5: Trainer: Rubaiyat Mollika, Consultant, Article 19 Bangladesh
Right to Information in the International Human Rights Framework (60 min.)

Subjects covered:
The UDHR and International Covenant on Civil and Political Rights (ICCPR); international treaties that guarantee freedom of information; International Principles and Standards on RTI law; World status of RTI laws; status of RTI laws in the member-countries of the South Asian Association for Regional Cooperation (SAARC); the work and principles of United Nations (UN), European Union (EU), Commonwealth, Article 19, CPJ, Amnesty International etc.

Session 6: Facilitator: Lead trainer
Right to Information Act and the Rules of 2009, Bangladesh (90min.)
Guest speaker: Sanjida Sobhan, Program Coordinator, Manusher Jonno (For the people) Foundation.

Subject covered:
Salient features of the FOI Act.

**Session 7: Trainer: Barrister Sara Hossain**
Understanding the domestic legal framework with reference to journalism (90 min.)

Subjects covered:
- Laws relating to contempt of court and defamation
- Legal remedies including protection of fundamental rights (Writ)
- Bangladesh laws that hinder or help the work of the journalists were discussed, focusing on practical case studies on the strength and weaknesses of the legal protection mechanisms including the higher judiciary.

**Session 8 Guest speaker -- Taslima Akhtar, Activist and Photographer**

Subject covered:
Experience of a survivor countering the legal framework (45 min.)

**Closing Session (30 min.)**

Summary for the day, and wrap up
Oral Evaluation

**Day 3**

**Recap of previous day’s learning (30 min.)**

**Session 9**
Human Rights Reporting (90 min.): Facilitator: Lead trainer

Subjects covered:
- Elements and Ethics of Human Rights Reporting
- Necessary Skills and Methods for Human Rights Reporting
Guest speakers:
Hana Shams Ahmed, Coordinator, International Chittagong Hill Tracts Commission
Monjurul Ahsan Bulbul, Editor-in-chief and CEO, Boishakhi Television

**Session 10**
Reporting from the Survivor’s Perspective (60 min.): Facilitator -- Lead trainer

Subjects covered:
- Understanding survivors plight
- Recognizing diversity, upholding plurality

Guest speaker
Shafiq Alam, Deputy Bureau Chief, AFP Dhaka

In this session, participants were taken through a practical exercise of transforming a crime report to a human rights report.

**Session 11**

Practical work: Preparing a Human Rights Report (60 min.)
Three Mentors (print, electronic and photojournalism) will guide them.

Mentors:
- Salim Khan, News Chief, Mohona TV
- Shahidul Alam, Principal of Pathshala South Asian Media Academy
- Reaz Ahmad, News Editor, *The Daily Star*

Objective:
The objective of this session was to give guidance to the participants to prepare for their print, audiovisual or photography assignment with a narrative portion of five hundred to six hundred words. This session also gave the participants an opportunity to review their existing work in the light of what they have learned about human rights reporting.

**Closing Session of the Day (30 min.)**
Summary of the day, wrap up and evaluation.
Human Rights Education in Indonesia: The Muhammadiyah Schools Experience

Agus Miswanto*

The United Nations (UN) has been emphasizing human rights education through a series of measures such as the Decade for Human Rights Education (1995-2004), the World Programme for Human Rights Education (2005 onward), and the adoption in December 2011 by the UN General Assembly of the Declaration on Human Rights Education and Training.

In this article, I present the results of a research on a human rights education model in Indonesia, particularly the curriculum used in Muhammadiyah schools. This human rights education curriculum led to strained debate between the progressive and conservative groups within the Muhammadiyah community, due mainly to the different perspectives on introducing human rights education. I analyze the human rights education textbook employed by the Muhammadiyah schools under that curriculum. I discuss the issues involved in the debate on human rights education between the two groups. Finally, I present the strategies used in the negotiations toward the introduction of human rights education, and which constitute an interesting process showing the ability of the organized progressive sector of the Muhammadiyah community (Mulkhan, 2007) during the 2005-2010 period to overcome the resistance from the conservative sector.

Background of the Research Issue

The relationship between human rights and religion has a long been debated, similar to the situation within Muslim organizations inside Indonesia. Appleby (2003:197) noted that the debate and dialogue among religious leaders were initiated in the 1980s and 1990s. It was perhaps a consequence of the ending of the Cold War that affected the shifting global constellation

*Agus Miswanto is the secretary of the Center of Islamic Studies, Muhammadiyah University of Magelang, Central Java, Indonesia.
relating to socio-economics, politics and strategies at that time. In Islam, according to Appleby (209-210), internal debate occurred between the proponents of an Islam compatible with democracy and human rights, and those who oppose this view, arguing that the two are incompatible in some relative or absolute sense. Furthermore, he said, “[R]eligious institution and actors who serve as agents of human rights face considerable opposition, not least from their own co-believers” (Appleby, 2003: 198). Therefore, tensions and even conflicts are inevitably part of the process of reforming education, and of the discourses and negotiating processes involved. This situation also describes what took place within the Muhammadiyah community in Indonesia during the 2005-2010 period, when human rights education was first introduced in Muhammadiyah schools.

Muhammadiyah is an Islamic organization in Indonesia that has concern for human rights. But the efforts of many Muhammadiyah leaders in introducing human rights education in Muhammadiyah schools were neither easy nor fast. Dynamic processes in terms of protracted and complicated negotiations about the pros and cons of introducing human rights education took place within the organization. This is understandable in view of many variants of thoughts and beliefs within Muhammadiyah. To generalize, two broad groups have emerged who are relatively in opposition to each other, namely, the progressive and the conservative groups. The progressive group is the main supporter of the introduction of human rights education in Muhammadiyah schools. The conservative group, on the other hand, tends to oppose whatever the progressive group supports, thus the opposition to human rights education. The leaders and followers of the two groups engaged in debates on introducing human rights education in Muhammadiyah schools during the 2005-2010 period. Introducing human rights education in Muhammadiyah schools was thus similar to entering a battleground, where the proposal sometimes appeared in danger of getting lost in the skirmishes between the two sides. During the 2005-2010 period, the conservative group was very dominant in controlling the leadership of Muhammadiyah. This was mainly due to the defeat of the progressive group following the 2005 Muhammadiyah Congress in Malang (Boy ZT, 2009, 1).

The debate between the conservative and progressive groups mainly focuses on translating human rights as a universal value or standard for human beings and their compatibility with Islamic values. Although this debate has started many years before, it is still going on within the Muslim
community in general. At the international level, the debate focused on the clash between maintaining international standard of human rights and respecting local cultures including Islam. The universalist view sees human rights as applicable to all cultures while the relativist view considers the tolerance of cultural difference (Merry, 2006: 8; Donnelly, 2007: 281-306). In Muhammadiyah, the debate focuses on the compatibility of human rights with Islamic and the Indonesian Muslim community values. The progressive group believes that human rights as life values are compatible with Islam, while the conservative group considers the reconciliation of Islamic teachings with human rights as spoiling the Islamic belief. The progressive group views human rights from the perspective of Islamic values.

**Research Methodology**

This research fortunately benefits from the author’s knowledge of “who’s who” inside and around Muhammadiyah. The research mainly used in-depth interviews with key individuals, combined with literature-based research in order to compile a range of data for analysis. The field research involved interviewing some prominent figures, including Muhammadiyah leaders, especially those involved either in supporting or opposing the introduction of human rights education in Muhammadiyah schools. The interviews focused mainly on policies relating to issues that have arisen during the 2005-2010 period. Curriculum development, including efforts to maintain continuity in the curriculum, was the central focus of the interviews. The literature study prominently focused on the textbooks used in Muhammadiyah schools.

For the analysis, the research uses one of the discourse analysis methods, the value-critical policy analysis approach. According to Schmidt, this concept comes from Martin Rein’s book entitled *Social Science and Public Policy* (Schmidt, 2006:302). According to Rein, value critical analysis is “one that subject(s) goals and values to critical review, that is, values themselves become objects of analysis; they are not accepted as a voluntary choice of the will, unamenable to further debate” (Schmidt, 2006:302). This method is used to deepen the analysis and to enable a deeper understanding of the dynamic process of developing the human rights education policy in Muhammadiyah schools in Indonesia.
Since human rights education was initially promoted in 2005 and introduced to Muhammadiyah schools in 2008, its implementation has caused discussions on a number of pros and cons among Muhammadiyah leaders. The value-critical policy analysis approach deepened the discussion on policy conflicts among Muhammadiyah leaders by seriously analyzing their (usually hidden) negotiations on policy goals, output and outcome.

Data Source

The research mainly collected primary and secondary data from two channels, in-depth interview and bibliography study. Primary data came from in-depth interview with Muhammadiyah leaders and the human rights education textbooks used in Muhammadiyah schools, while secondary data came from the publications published either by Muhammadiyah and its activists or from related researchers.

In-depth interview was done with prominent figures of Muhammadiyah who represented the two sides of the debate. The opposing figures were mostly from the two institutions within Muhammadiyah, Muhammadiyah Tarjih Board and the Muhammadiyah Tabligh Board. The Muhammadiyah Tarjih Board is like a religious body with authority and responsibility over issuance of Islamic decree (fatwa) within Muhammadiyah. Syamsul Anwar, the chairperson of this Board, and Muhammad Ihsan, a member of the Board, were interviewed in Yogyakarta on 22 July 2010. The Muhammadiyah Tabligh Board is an authoritative body with authority and responsibility on handling and organizing the promotion and socialization of Islamic values within the community. Adian Husaini, a member of this Board and a prominent voice in opposing and criticizing human rights education, was interviewed in Jakarta on 29 July 2010.

For the proponent of human rights education in Muhammadiyah schools, the interview was done with people from the two institutions that handled and organized the introduction of human rights education in Muhammadiyah schools directly, namely, Muhammadiyah Primary and Secondary Schools Education Board (later called Muhammadiyah Education Board) and the Maarif Institute for Culture and Humanity. The Muhammadiyah Education Board is an authoritative body of the Muhammadiyah community that handles, organizes, and monitors educational policies covering Muhammadiyah primary and secondary schools in
Indonesia. Husni Thoyyar, the second chairperson of the board, was interviewed on 30 July 2010 in the Muhammadiyah head office in Jakarta. The Maarif Institute for Culture and Humanity, although ideologically affiliated with Muhammadiyah, is an autonomous and independent institution. Officially, Maarif Institute was founded in February 2003 by prominent Muhammadiyah leaders inspired by the idea, vision, and activities of Syafii Maarif, a former general chairperson of Muhammadiyah in 1999-2004. The Institute was thus named after his last name, Maarif. Fajar Rezaulhaq, the Executive Director of the Institute, was interviewed in his office in Jakarta on 28 July 2010.

Two books, written by Husni Thoyyar in 2008 and used in Muhammadiyah schools, are the primary data sources. The first is a guidebook for teachers entitled *Buku Panduan Guru: Al-Islam dan Kemuhammadiyahan Berwawasan HAM* (Guidebook for Teachers: Al-Islam and Muhammadiyahism with Human Rights Insights), and the second is a textbook for students entitled *Pendidikan Al-Islam Berwawasan HAM* (Islamic Education with Human Rights Insights).

**Muhammadiyah Education System**

Muhammadiyah is the largest modern Muslim organization in Indonesia, founded by Ahmad Dahlan in Yogyakarta in 1912. Historical evidence appears to show that Dahlan wanted reform within the Muslim community, to prevent it from becoming more traditional in outlook. He looked for ‘progressive’ solutions to future religious questions. The proposed solution was the introduction of a modernization process within the Muslim communities to prevent them from becoming remnants of the past, traditional societies. In line with this proposed reform, Dahlan, in his enthusiasm, “copied Christian missionaries in terms of the approach to education, orphanages, health clinics, and homes for the needy” (Asyari, 2007:19). In other words, the explicitly ‘social reformist’ mission of many Christian churches was echoed in the approach of the new organization. Fuad (2006: 402) explains this mimicry:

> Dahlan had apparently recognized the possibilities of the new Western system of education as an instrument of change that might improve the lot of the Indonesian Muslim community. The Western system of education, that is, in Dahlan’s eyes,
promised itself to be an instrument for reforming the Muslim community.

The early efforts and philosophical ideas of Dahlan continued as an important influence in Muhammadiyah, and have been carried out to some extent in terms of tying the organization to its early commitment to strengthen civil society and social services, and of producing a breakthrough through modern Islamic education in Indonesia to fit the current era.

As a modern Muslim organization, Muhammadiyah has a complex organizational structure. At the top level is the national office, then in descending order the provincial offices, district offices, branch offices, and sub-branch offices. They represent millions of Muhammadiyah’s supporters. Delegates from offices around the country from all levels attend five yearly national conventions called Congresses or Muktamar. In the Muktamar, delegates elect a new chairperson of the national office, deliberate on national problems, and ratify national policies and programs for the coming five years (Fuad, 2004: 401). Besides that, Muhammadiyah is also an umbrella organization for a range of autonomous wings or affiliated organizations (Muhammadiyah, 2010).

The Muhammadiyah national office arranges the national guideline policies on education and social activities for the different levels of Muhammadiyah offices. For example, in the area of education, in an ascending order an Aisyiyah (women) branch manages a kindergarten; a Muhammadiyah branch, a primary school; a Muhammadiyah district office, junior and senior secondary schools; and a Muhammadiyah provincial office, a college.

These regulations about hierarchical prerogatives are strict only on paper. In practice, offices and personnel at the lower levels enjoy a high degree of freedom to initiate programs and activities. In fact, initiatives generally come from below, indicating strong grassroots initiatives and independence within the organization. The national office encourages grassroots initiatives by stipulating that the establishment of a lower office should be based on its capacity to establish and run an endeavor, whether in the form of a school, a clinic or an orphanage (Fuad, 2004: 402).

The demand for formal education and the lack of state resources to satisfy this demand give private organizations, including Muhammadiyah, an opportunity to establish new schools at all levels from pre-schools to colleg-
es in Indonesia. 2010 data show that Muhammadiyah has 2,289 pre-schools, 2,604 primary schools, secondary schools consist of 1,722 junior secondary schools (both regular schools and madrasahs [Islamic schools]), and 1,023 senior secondary school (regular, vocational schools, madrasahs, and pondok pesantren), and seventy-one schools for persons with disability. It also has one hundred sixty-two universities and colleges (two-year, three-year, or four-year colleges). (Muhammadiyah, 2010).

The Muhammadiyah schools have adopted the national curriculum standards. The Indonesian state designs two national curriculums, one for the general schools and another for the madrasahs. The general schools are under the jurisdiction of the Ministry of National Education (Mone) and offer only general subjects. Mone develops the national curriculum for these schools, in which religious instruction is only compulsory as a once-a-week, two credit-hour subject (Fuad, 2004: 405). But general Muhammadiyah schools though under the jurisdiction of Mone offer many religious subjects, not only once a week, but three or four times a week.

The madrasahs are under the jurisdiction of the Ministry of Religious Affairs (Mora), which designs their national curriculum. This curriculum consists of thirty percent religious subjects and seventy percent secular or general subjects. A small percentage of the madrasahs are public schools and run under Mora, while a large majority of them are privately-run. Besides the madrasah system, there are traditional pondok pesantren spread throughout Indonesia that are entirely privately-run and offer exclusively religious subjects and independently design their own curriculum (Fuad, 2004: 409). Within Muhammadiyah, an office of any level has the freedom to decide on the type of school to establish - general school, a madrasah, or a pondok pesantren.

Human Rights Education in Muhammadiyah

In Muhammadiyah schools, human rights education is a result of reconciliation between Islamic law principles and human rights values. Abdul Mu’ti, a secretary of Muhammadiyah education board, defines it as a process of learning a religious subject or group of religious subjects (such as belief [aqidah], ethics [akhlaq], ritual Islamic law [Ibadah-syariah], Qur’an-Hadits [words of Prophet Muhammad], and Islamic history) with human rights context. The contextualization in human rights of religious learning
Human Rights Education in Asia-Pacific does not mean reduced substance of religious teachings (or their forced interpretation) in order to accord with human rights. While religion and human rights have historically different sources, both have the same object and goals (preservation of honor and elimination of threat to life according to the human being’s natural character [fitrah] as an honorable creature). Therefore, contextualization is meant to strengthen the meaning of religious education in daily life and to implement it with relevance to human rights (Mu’ti, 2007: 144).

The textbook of Muhammadiyah schools explains the three primary goals of learning: cognitive, skills-related, and affective (emotional) (Thoyyar et al., 2008: 23). For cognitive purposes, students gain a wider horizon on Islamic teaching by relating it to human rights values. Students are expected to better understand Maqashid al-Shariah principles, Islamic law principles, by knowing human rights principles. In addition, students should know and be able to understand the verses of the Holy Qur’an and Prophet Tradition that also relate to the appreciation of human rights. In other words, students should come to appreciate and understand human rights as being firmly grounded in an Islamic framework, and avoid mistaken understanding of human rights. As an Islamic scholar said, “we want to reduce doubts [about the compatibility of] Islam ... with human rights” (Interview with Thoyyar). For skills purposes, students should be able to practice competence in employing these values in their daily activities. Consequently, they can defend their rights in their daily lives, and have the competence to advocate for the rights of others. Finally, for affective purposes, students’ everyday attitudes, behavior, and habits should accord with human rights principles and Islamic teachings.

Besides raising awareness on human rights, the development of the curriculum is due to the need to revitalize Muhammadiyah schools. The curriculum represents the major process of spreading core ideas and preparing the competencies of educators in the future. Without curriculum development, Muhammadiyah education is in danger of becoming less relevant and of losing its vitality. School revitalization is done through the change of textbook contents, the development of the teachers’ capacity to deliver lessons in class, the provision of supporting resources, and the improvement of both the substance and outcomes of lessons. This can be seen as essential for the future improvement of the situation of the Muhammadiyah movement in its local, national, and global contexts (Effendi, 2010: 46).
In addition, reconciling Islam and human rights education in Muhammadiyah schools addresses the different needs of Muslim Indonesia, especially in Muhammadiyah schools. Rezaulhaq sees human rights education based on a western perspective as involving education specifically and exclusively about human rights principles or norms, such as covenants (Interview with Rezaulhaq). Unfortunately, in his view, in the Indonesian educational system, or in Muhammadiyah schools, this way of teaching human rights will burden students with an extra subject and more lessons. Therefore, he sees the need to use other ways of introducing human rights education, such as integrating it with other subjects being taught like religious education. From this point of view, human rights education functions as a perspective within broader religious education. Human rights education is therefore important in addressing humanitarian problems that Muhammadiyah is concerned with. Under this view, concern about violence, religious freedoms, and tolerance becomes part of a shared and common platform and vision between human rights and Islam.

Content of the Human Rights Education Curriculum

The human rights education curriculum model in the textbook for Muhammadiyah schools was developed on the basis of reconciliation of universal Islamic law principles (Maqashid al-Shariah) and human rights principles. According to Thoyyar, Maqashid al-Shariah and human rights have a common platform or basic value system, therefore Islam and human rights can meet where they share values (Thoyyar, 2008: 12). In other words, the curriculum reconciles the values, norms and goals of shariah (Maqashid al-Shariah) with the goals of international human rights instruments wherever possible and as far as possible.

The Maqashid al-Shariah theory was developed initially by Imam al-Ghazaly to express ideas of goodness of the human being in five basic principles (Dasuki and Abdullah, 2007:30-33): 1) Protection of religious freedom and belief (Hifz ad-din), 2) Right to protection of life (Hifz an-nafs), 3) Protection of reproduction and child rights (Hifz an-nasl), 4) Protection of freedom of thought and expression (Hifz al-aql), and 5) Rights to property and work (Hifz al-mal). Imam Abu Ishaq as-Syatibi developed further these principles. What is important to note is that the five basic principles of Maqashid al-Shariah form the foundation for social development in Islam.
and are almost identical with the key principles underpinning the Universal Declaration of Human Rights (Thoyyar (b), 2008: 12).

According to Yahya (2008:38), a teacher of Muhammadiyah secondary school in Tasikmalaya, the curriculum integrates absolute values of God (ilahiyah) with relative values of the human (insaniyah). Then, according to Nugraha (2008: 34), a Secretary of Muhammadiyah Education Board of Garut District, Maarif Institute and Muhammadyah Education Board try to reproduce the success of Rasulullah (the prophet) in introducing and upholding Islamic belief with two major premises. The first is rahmatan lil ‘alamain (compassion for all human beings), a vision within which Islam as a religion presents a form of peace (al-Islah), freedom (al-hurriyah), equality (al-musawah), equity (al-isawah) and brotherhood (al-ikha), tolerance (tasamuh), competing in doing good (fastabiqul khairat), and discussion and consultation (syura). All these principles are guide to universal values. The second premise is the need for consistency between words and actions. In other words, values function not for window dressing, but as values to be realized in practice during the course of daily life.

The development of the human rights education curriculum is therefore founded on the five basic principles of Maqashid al-Shariah or Islamic law. Besides that, another basic principle of protection of environmental rights (hifz al-bi’ah) has been added to reflect current environmental priorities.

The Muhammadiyah human rights education school textbook discusses the five basic principles of Maqashid al-Shariah in the following manner (Interview with Thoyyar):

a. Protection of religious freedom and belief (Hifz ad-Din)

Hifz ad-din is translated into protection of religious freedom. In the textbook, hifz ad-din covers many topics regarding religious freedom such as right to belief and religion, right to practice belief or religion, right to be appreciated for one’s belief, and right to promote and disseminate religion. Actually, hifz ad-din has different interpretation among Muslim scholars. Under the conservative Muslim view, hifz ad-din is understood as protection of religion, and the protected religion is solely Islam. In contrast, the progressive Muslim view defines hifz ad-din as protection of religious freedom. Consequently, Islam is not the only protected religion because other religions are also subject of right to protection (Thoyyar (b), 2008: 1).
In support of the legitimacy of this view, besides the Quran and prophet traditions, the textbook also uses the international human rights instruments such as the Universal Declaration of Human Rights (UDHR, 1948), International Covenant on Civil and Political Rights (ICCPR, 1966), European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), and the Cairo Declaration on Human Rights in Islam (1990) (Thoyyar, 2008:66). These instruments include fundamental principles and norms on religious freedom. They cover protection of the internal (freedom to have, adopt, and defend one’s own religion and religious beliefs) and external (freedom to perform one’s religion such as doctrine, practices, rituals and obedience [piety] in public and private domains) aspects of this right. They include the principle that no one should be oppressed based on choice of religion or belief. They also include the defense of the freedom of assembly of religious groups and the right to obtain legal status and protection for their groups. Finally, religious freedom is viewed as a non-derogable right (Thoyyar (a), 2008: 66).

b. Right to life protection (Hifz an-Nafs)

Hifz an-nafs is translated as the right to protection of life. The protection of life is a basic right for every human being. In the textbook, hifz an-nafs covers any forms of right related to life such as, the right to life, the right to a decent life, the right to non-discrimination, right to involvement in community and organizational life, and right to self-defense. Interestingly, in presenting these rights, the textbook is illustrated with real worldwide examples of humanitarian crises, from the holocaust regarding Jews, and genocide in Bosnia, to issues of hunger in Indonesia (Thoyyar (b), 2008: 35-69).

c. Protection of freedom of thought and expression (Hifz al-’Aql)

Principally, this principle is about the protection of intellectual freedoms. In the textbook hifz al-’aql is translated into an extended topic, beyond basic freedom of thought and expression, and includes various subjects, such as the right to education, to access to information, to self-expression, to science and technology development, as well as intellectual property rights and patent rights. Therefore all kinds of intellectual activities of human beings are included under the term hifz al-’aql, which should all be guaranteed and protected (Thoyyar (a), 2008: 105; (b), 2008: 71).
d. Protection of reproduction and child rights (*Hifz an-Nasl*)

*Hifz an-nasl* is translated into protection of one’s descendants. This includes right to reproduction, right to development and growth, and protection rights for children. Every couple and every person has rights to have and determine the number of children, and to minimum guarantees on safety and health as well as reproduction (physically, mentally, and socially). Therefore, this principle covers issues of rights to marriage, reproduction, descendants (children) and family planning (Thoyyar, 2008: 125-127). In other words, family life is protected as having a vital importance for the next generation. According to Article 5 of the Cairo Declaration on Human Rights in Islam, “[T]he family is the foundation of society, and marriage is the basis of making a family.” Men and women have rights to marriage, and there should be no restrictions based on race, skin color, ethnicity or nationality. Furthermore, society and state have to eliminate all restrictions to marriage and facilitate marriage procedures legally. This then leads to better guarantee of protection of marriage and family welfare (Thoyyar (a), 2008: 128; (b), 2008: 107).

Regarding descendants’ rights, every child has rights to grow and develop, and to decent facilities to help the child grow and develop well. These rights cover breastfeeding, good and healthy nutrition, proper care and education. Based on Article 26 of the Child Protection Law (2002), parents are obliged and responsible for caring, educating and protecting their children. Furthermore, parents are responsible for stopping child marriage practices (Thoyyar, 2008: 132). They also have to raise their children based on capacity, and interests. According to the textbook, there are at least four problems of children that should be given attention to, including those related to education, health, work, and safety (for children who live in conflict areas).

e. Rights to property and work (*Hifz al-Mal*)

*Hifz al-mal* is understood as protection of property rights. In the textbook, this right also covers ways of legally obtaining properties. From an Islamic perspective, Allah is the Creator and the owner of all things in the universe, while humans are only limited owners of property and treasure in the world. All properties are entrusted by Allah to human beings; therefore properties have to be obtained through lawful and legal ways (*halal*). Obtaining property according to Islamic principles is an obligation, and ownership and defense of such property, acquired legally, can be considered part of one’s religious sacred sacrifice (*jihad*) (Thoyyar (a), 2008: 139; (b), 2008: 129).
f. Environmental protection (*Hifz al-Biah*)

*Hifz al-biah* can be translated into protection of the environment. In the textbook, *Hifz al-biah* covers many environmental rights such as right to clean air, right to access clean water, right to cultivation of land, and right to enjoy clean environment. Actually, these rights are a new element in *Maqashid al-Shariah*, not previously included in traditional Islamic Law. The primary reason for making *hifz al-biah* part of *Maqashid al-Shariah* is the occurrence at present of severe destruction of the environment everywhere (Interview with Thoyyar). Although, it is a new part of *Maqashid al-Shariah*, it is not a new concept in Islam. The Qur’an asserts in various verses the need to ensure the continuity of future generations and of human beings’ future (QS al-hasr [59]:18; al-nisa [4]:9, etc.). This includes the need to develop the system of social welfare in the world (QS Hud [11]:61, etc) and prohibitions on doing harm to the environment (QS al-Maidah [5]:32, QS albaqarah [2]:25, and 220, QS al-rum [30]:41). Therefore, there is a good religious foundation for Muslims to become more aware that natural resources and the environment need consideration on the basis of the *hifz al-biah* principle. Protecting both the human beings and the natural environment is the only way to ensure sustainability of the next generation and the safety of the future on earth (Thoyyar (a), 2008: 12-14; (b), 2008: 155).

**Pedagogy in the Human Rights Education Textbook**

The textbook of Muhammadiyah schools offers various learning models or methods of human rights education that encourage students to participate and learn actively. (Thoyyar, 2008: 61-62). The participatory learning/teaching methods introduced in the textbook develop enthusiasm in students in thinking and finding solutions to problems. The methods include shared reading of materials; group discussion; use of newspaper clippings, drawings, photos, and songs; games; field trips; and storytelling. To make it easier for teachers to manage classes involved in these activities, the textbook identifies five steps in handling the subject matter in class:

1. **Subject summary.** This provides a global description of the learning subject, which is presented in a short sentence containing the key words.
2. Digging the idea (or ‘deepening’). This is meant to attract the interest of students on the learning topics. This presents ideas, for example, through comics, stories, newspaper clippings, so that important issues can be discussed.

3. Core lessons. The core lessons are presented as short, easy-to-understand points for students to learn the main lessons around the topics they have taken up.

4. Enrichment. This provides students supplementary examples that help strengthen their impressions and initial understanding on the learning subject.

5. What has been achieved? This evaluates the competency of students in understanding what they have discussed. It takes the form of questions or assignment, for example (Thoyyar (a), 2008: 25; Effendi, 2010: 42-44).

These steps are very much in line with Paulo Freire’s participatory teaching concept. Freire proposed a “problem posing-education” (Barlett, 2008: 3) or “liberating education” to replace the concept of “banking education” (Hudalla, 2005:5). Liberating education is a process of humanizing people through dialogue. Dialogue is a central component of Freire’s liberating education, which involves identifying the problems and proposing solutions. Dialogue is useful because it allows individuals the opportunity to share their experiences in a supportive and constructive atmosphere (Barlett, 2008: 2-3). In contrast, the “banking education” framework considers teachers as very central in transferring knowledge, while students are only “receptors who patiently receive, memorize, and repeat” knowledge (Hudalla, 2005: 4-6). Banking education however never facilitates the “liberation” of students.

Regarding human rights education in Muhammadiyah schools, a research found that the most attractive methods were group discussion, followed by role play (Effendi, 2010: 68). The research also found that these methods have enhanced the teachers’ capability to ensure an attractive learning atmosphere for students in human rights education. The teachers in West Java, for example, acknowledged that they succeeded in encouraging enthusiasm among students in teaching human rights, because their methods were very varied. At the same time, student’s recognized that
Islamic lessons became more attractive when human rights insights were incorporated (Effendi, 2010: 68).

Even the majority of teachers said that they were used to employing the old learning method that put the teacher at the center, but the textbook provided a different teaching that they wanted to use instead of the old method. They were also more comfortable in the new method that made the transaction of lessons more easy, while the students also became more receptive to the subject (Effendi, 2010: 78). In other words, the teachers and students agreed that the active and participative learning method was very helpful in making them understand the subject easily and fast. Furthermore, the method was very helpful in improving teaching capability, as it did not bore the students (Effendi, 2010: 67).

The textbook for the human rights education curriculum has succeeded quite well in reconciling Islam and human rights. The textbook starts from the universal values on which both Islam and human rights stand. Regarding content, the curriculum used hybridity as a form of vernacularization (translation) of human rights. The textbook uses the goals of Islamic law principles (Maqashid al-Shariah) that are believed to be in common with human rights principles and standards. The contents of the textbook avoid the formal human rights documents in the explanation, although sometimes it is still accompanied by few provisions from international human rights instruments. Islamic language is the very core in explaining human rights issues in the textbook. This is unavoidable because human rights education is incorporated into the Islamic education curriculum. Through the textbook, the progressive group has exploited the Maqashid al-Shariah in order to widen perspectives on the needs of Muslim society and individuals in the contemporary era. Due to needs and demands, the progressive group has gradually brought out more issues that could be included in a wider perspective of interpreting the Islamic doctrine. For instance, the progressive group promotes the importance of environmental issues by interpreting Maqashid al-Shariah, which is not previously explicit. Also, the human rights education curriculum of Muhammadiyah schools has so far proven quite successful in dealing with contemporary Indonesian issues.

Regarding the pedagogic element, the textbook uses interactive pedagogical approaches as applied to international standards of human rights education. Teachers tend to acknowledge that the teaching materials on human rights, democracy, gender, pluralism are valuable new forms of
knowledge which can widen and enrich the students’ and teachers’ perspectives if handled wisely (Effendi, 2010: 57). According to Andrea Hirata, a well-known Indonesian author, the textbook has managed to correlate social issues with Islamic character building and specifically Muhammadiyah-influenced forms of learning (Thoyyar (a), 2008: back cover).

Therefore, the content of the human rights education curriculum in Muhammadiyah schools today appears to have a strong relevance to the mandate of Article 26 (2) of the UDHR:

> Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

In line with the UDHR, Article 3 of the United Nations Declaration on Human Rights Education and Training states that human rights education is a long-term process which starts from pre-school. Article 5(3) provides that human rights education should “embrace and enrich, as well as draw inspiration from, the diversity of civilizations, religions, cultures and traditions of different countries, as it is reflected in the universality of human rights.” See the Appendix of this publication for the full text of the declaration.

**Debate on Human Rights Education**

Discussions and debates on compatibility between human rights and Islam have been going on for a long time. These discussions and debates have not been confined to western academics who are doubtful about Islam’s support for human rights. Debate and dynamic discourse also take place within the Muslim community, especially between the so-called conservative and progressive groups. The latter group is often identified as liberal Muslims (Chase, 2007: 1-15).

The universality of human rights is based on an assumption that human rights are natural attributes of human beings possessed by all people universally, and on the idea about inherent existence of rights in all human beings (Plantilla and Raj, 1997:13). Therefore, the validity of human rights
is only derived from the very source of their existence, the nature of human beings, and not seen as confined by certain contexts, such as social-economic-cultural and political contexts or levels of ‘development’, in whatever sense (ibid.). In contrast to this, the relativist conception of human rights is based on the assumption that human rights are conceived as a reflection of the culture of the major authors of human rights instruments, reflecting existing power struggles and unequal social relations and biases. Therefore, from this relativist perspective, it cannot be assumed that human rights are universal in their application, since some rights may mesh more with some cultures and contexts than with others.

The alternative, and interesting framework, is the cross-cultural critique, which according to Marks and Clapham (2004:395) was originally proposed in the work of An-Naim. This notion concerns with the cultural legitimacy of international human rights standards. In An-Naim’s assessment, a major cause of disregard for human rights is their lack of culture legitimacy in societies that have different traditions from those with reference to which the foundational instruments were largely framed. He considers, however, that this gap can still be filled. In his words,

I believe not only that the universal cultural legitimacy is necessary, but also that it is possible to develop it retrospectively in relation to fundamental human rights through enlightened interpretation of cultural norms (An-Naim in Marks and Clapham (2004:395).

Therefore, the project of interpreting cultural norms framed and enlightened by human rights values is a way toward making human rights more acceptable and legitimate in the context of multicultural society. Consequently, the enlightened cultural norm becomes a tool in promoting and supporting human rights within society.

The conflict between conservative and progressive groups within Muhammadiyah on human rights issues has genealogical roots. A Chairperson of Muhammadiyah Tarjih Council (Syamsul Anwar) acknowledges that there is a polemical issue as far as human rights education in Muhammadiyah schools is concerned. According to him, there are at least two groups, conservative and progressive. The conservative group subscribes to the literal text interpretation approach. Its members have tradi-
tional educational background, and the group exists strongly in the districts. The progressive group has the contextual text interpretation approach that considers much more the social context and cultural dynamics in text interpretation (Barus, 2008:50-51).

Thought divergences are not new in the history of Islamic thought. Muhammad Abduh's followers in Egypt, for instance, were split into two opposing groups. Rasyid Ridha, Sayyid Qutb, and Hasan al-Bana were students and also Abduh followers who developed an interpretation and understanding method in conservative, scriptural, and fundamentalist model. On the other hand, other Abduh students and followers such as Mustafa Abd ar-Raziq, Qasim Amin, Luthfi Assayid, and Ali Abd ar-Raziq developed a liberal perspective on Islam (Houroni, 1983:161-192).

In Muhammadiyah, the rise of the strain between the conservative and progressive groups relates to Muhammadiyah doctrine on Puritanism and Muhammadiyah's character as a puritan Islamic movement. Puritanism can be interpreted as either right wing perspective (that arouses a conservative and scriptural Islamic perspective) or left wing perspective (that arouses a liberal Islamic thought, and then the progressive Islamic thought). (Boy ZTF 2009:59) In practice, Puritanism within Muhammadiyah can be manifested as the purification of Muhammadiyah faith that should not be contaminated with any perspective that may destroy Muhammadiyah belief or faith. This type of purification of faith refutes the marriage between Islam and local tradition. On the other hand, Puritanism can also be interpreted through contextualization of Muhammadiyah doctrine in responding to contemporary issues such as pluralism, multiculturalism, democracy, gender justice, human rights, and globalization. The progressive group has the tendency to choose the second interpretation as their approach to purification. Therefore, it is understood that the tendency of progressive Islamic thought within Muhammadiyah cannot be separated from the need to respond to contemporary issues, contextualizing Muhammadiyah within the progressive era, and interpreting Islam in a new way.

Boy ZTF sees the rise of conservatism within Muhammadiyah to have been triggered by many factors such as politics, ideology, and the educational background of its activists. The rise of progressivism within Muhammadiyah, however, is caused by two important factors, namely, Muhammadiyah's intellectual stagnation issues and the rise of conservatism. The birth of progressive group within Muhammadiyah is also a product of
the new discourse on Islamic thought introduced by a number of intellectuals and the young generation in Muhammadiyah (Boy ZTF, 2009:60-61).

The development of conservatism in Muhammadiyah can be understood through two meanings. First, it relates to a political attitude resistant to globalization, which is characterized as compromising local identity and particularity. The conflict between the global and the local and the perceived threat to local communities arouse the rise of conservatism. Second, conservatism is also understood as fundamentalist expressions that totally refuse all forms of change. This mode can be seen as the development and strengthening of exclusivity. The conservatism within Muhammadiyah, according to Boy ZTF, is of the second type and triggers the rise of refusal against all forms of change. On globalization issues, for instance, few groups within Muhammadiyah would adopt an accommodating strategy, while others would choose a confrontational strategy. According to Haedar Nashir, the rise of conflict between conservative and progressive groups is a manifestation of failure in finding within Muhammadiyah a common articulation that bridges purification and reform perspectives (Boy ZTF, 2009: 87-88).

Regarding human rights education, the position of the progressive group in Muhammadiyah is unique and complex. Besides the need to convince the conservative group to support human rights education, the progressive group also has to convince the universalist human rights groups that doubt the link between Islamic values and human rights standards.

Different from the conservative group, the progressive group uses a wide perspective and looks at the Islamic doctrine in the dynamic context of the past, present, and future. In the context of the past, the progressive group considers Islam as a critic over dullness and backwardness of human beings, as well as offered as a “medicine” to structure society into a peaceful family, a good village (qaryah tayyibbah), and a good country (baldah tayyibah). The pre-Islamic Arab (Jahily) society is seen as maintaining human rights violations such as slavery, tradition of killing female infants, monopoly over resources by elites of Mecca, and discrimination against women. Islam came to offer liberation and reform, and introduced fundamental values such as equality, justice, brotherhood, peace, and human dignity as pillars of the Islamic system (Thoyyar, 2008: 7). Muslim people therefore are obliged to appreciate the rights, such as right to live and protection of life (QS al-maidah [5]:32), right to get decent life (QS al-Dhariyat [51]:12), right to freedom and freedom from slavery (QS al balad [90]:130), right to get
justice (QS al-Maidah [5]:3), right to equality as human being (QS al-hujurat [49]:13), and so on. (Thoyyar, 2008: 10-11). These are important elements in Islam that accord with human rights values in the modern era.

Historical evidence also shows how Islam has proven as human rights defender in the context of slavery and social problem phenomenons. Islam encouraged people to liberate slaves charitably, which was considered a good deed; Muslim people were even advised to marry slave women in order to liberate them. The policy went on until the period of the fourth Khalifah when the entire slaves in the Arab peninsula could have been liberated. The Prophet Muhammad himself liberated sixty-three slaves, Aisyah liberated sixty-seven slaves; Abbas liberated seventy slaves, Abdullah bin Umar liberated one thousand slaves, and Abdurrahman bought thirty thousand slaves and liberated them. Then, in the case of economic distribution, Islam opened an equal chance for all people to access resources, which were controlled by the elites of Mecca during the pre-Islamic era. Besides that, Islam obliged the giving of alms (zakat) and charity (infaq, shadaqah) as redistribution mechanisms of resources, income, and wealth. (Thoyyar (a), 2008: 8)

The Madinah Charter is also an historical evidence that Islam protected plurality of social forms and belief. It is considered as a foundation of acknowledgment of pluralism in Islam. Brotherhood, friendship, peace, and togetherness were bonds for all sections of Madinah people, Muslim or non-Muslim at the early Islamic period. Non-Muslim people were acknowledged as one community together with the Muslim community (ummatun ma’al Muslimin) (Thoyyar, 2008: 8-9). This evidence at once refutes the view of the conservative group which denies pluralism.

Dahlan, a Muhammadiyah founding father, is an important figure who greatly appreciated human rights and diversity. He had high tolerance and never hated other religions. He maintained friendship with the Dutch people who had different religion and belief, and who in turn supported what he was doing. His example shows how to maintain good relationship with different religious groups and appreciate pluralism. Furthermore, Muhammadiyah itself recognized pluralism as part of Islam and social phenomenon. In 2000, Muhammadiyah published a book entitled Tafsir Tematik al-Qur’an tentang Hubungan antar Umat Beragama (The Thematic Quranic Exegeses on Relationship Among Religious Beliefs), as a guide book for pluralism within Muhammadiyah (Biyanto, 2009: 111). The example of Dahlan and the Muhammadiyah stance in the past counter the conservative stance today.
Human rights have become global phenomenon in ensuring and protecting people from any kind of violence and oppression. The UDHR has become a global value standard that should be effectively treated as an obligation, and should be accepted and realized everywhere (Thoyyar (a), 2008:9).

Islam as a religion is committed to human dignity but faces the challenge of proving its commitment to human rights. Although Islam has a different approach and rules for settling conflicts at specific levels and circumstances, it does not mean that Islam and human rights cannot be reconciled. Islam can support and help achieve the goals of UDHR (Khan, 1967:140-143), due to its commitment to human dignity.

Furthermore, human rights have become global issues that go beyond the concerns of adults, and cover matters regarding children and youth. This makes human rights and related knowledge a very important subject that should be taught to children from early age. The old paradigm which often considers human rights as elite subject and only relevant to discussions among adults, activist groups, and academics is no longer relevant to the contemporary demands and challenges. Introducing human rights at early age is very important and needed because majority of the victims of human rights violations are children. Children do not know their rights, do not know how to defend them, and how to find a way out of human rights violations (Thoyyar (a), 2008: 15-17). Therefore, there are reasons why it is very important to introduce and impart human rights education through Islamic education.

**Negotiation and Strategy**

Negotiating the introduction of human rights education in Muhammadiyah schools was a complicated process and took much time. It started in May 2007 when the progressive group launched a campaign on the importance of human rights education for Muhammadiyah schools and ended in August 2008 (Interview with Rezaulhaq). By September 2008, the human rights education curriculum was introduced in the Muhammadiyah schools. The progressive group had to undertake a series of initiatives to improve their negotiating position before and after September 2008. These initiatives included: 1) conferences, 2) research, 3) workshop 4) writing the textbook and modules, 5) review, 6) dialogue, and 7) implementation (Thoyyar (a), 2008: 6).
To support the success of curriculum development and the implementation of human rights education, the progressive group used many strategies and approaches to gain positive responses and to increase interest from key stakeholders in the Muhammadiyah education system. At least two approaches were employed in negotiating with people whose perspectives and interests were less favorable to human rights education. The first was a structural approach to negotiation and the second a more strategic approach.

The progressive group took into consideration the importance of authority and power relations in determining the success or failure of introducing human rights education in Muhammadiyah schools. The progressive group therefore concentrated on the institutions and people who exercised power within Muhammadiyah as an organization. For instance, from the very start, the progressive group invited the Muhammadiyah Education Board to be involved in the human rights education project. While the Education Board initially failed to respond, it subsequently responded by offering a Memorandum of Understanding (MOU) with Maarif Institute. The Education Board concluded this MOU after receiving demands from grassroots members, particularly from many stakeholders in education at the regency level, to support human rights education. The formal and structured link with Maarif Institute, on the other hand, was very useful in the campaign.

The progressive group initiated bottom-up processes to discuss the implementation of human rights education. As a result, the request for curriculum reform came from the grassroots level, especially from Muhammadiyah schools which were key stakeholders at the district level, rather than from ‘above.’ As Rezaulhaq, a director of the Maarif Institute, said in an interview (Interview with Rezaulhaq):

We have talked with the elite of Muhammadiyah, but they did not respond to our proposal. Therefore, we pushed Muhammadiyah education stakeholders at the grassroots level, especially at district level, to take steps to demand curriculum reform within Muhammadiyah schools.

The progressive group considered that education stakeholders at the bottom or grassroots level have potent power to put pressure on the na-
tional level Muhammadiyah educational structure. Although weak in terms of leadership, stakeholders at the grassroots level know the real conditions and the actual need for the development of the Muhammadiyah education system. Empowering the grassroots stakeholders is a way of increasing their power and leadership that can help, build and support the required educational changes as well as mobilize supporters of human rights education. This approach seems to be in line with the stakeholder analysis formula which says: “supporters with little power and leadership: focus on ways of increasing the power and leadership of these stakeholders” (Schmeer, 2000:2-31).

Besides the bottom-up strategy, the progressive group also took some initiatives to approach and convince different people at the top (national) level. These initiatives included dialogues, meetings and seminars. Regarding the neutral stakeholders at the higher level of the organization, the progressive group seems to have applied a stakeholder analysis formula that “focuses on convincing the stakeholders to support the policy and increasing their power and leadership where necessary” (Schmeer, 2000:2-31). With the acceptance of the human rights education proposal, the progressive group worked closely together with the Maarif Institute and the Muhammadiyah Education Board in defending human rights education before the conservative group. The Muhammadiyah Education Board, the central authority on all educational policies of Muhammadiyah, took the task of responding to the many critics from the conservative group, while the Maarif Institute took the role of “a think tank” on human rights education for Muhammadiyah schools. This division of tasks was very effective in reducing active opposition to human rights education within Muhammadiyah. The division of tasks considered and determined the respective capacities and authority of the two institutions in determining the success of human rights education in Muhammadiyah schools (Interview with Rezaulhaq).

Besides using the structural approach that focuses on the role of power relationship, the progressive group also used strategic approach to negotiation. This approach mainly considers the importance of action and maneuver in gaining the result or goals of negotiation (Alfredson and Cungu, 2008: 7). The progressive group planned diverse strategies to gain positive result in negotiating with the different levels of people within Muhammadiyah who would like to support the human rights education project. The progressive group exerted many efforts (participation, partnership, and dialogue) as part of the strategic approach for this purpose.
Participation, partnership, and dialogue were exploited by the progressive group to maintain and manage all possible resources to gain positive impact or outcome of the negotiation process.

Channeling participation and partnership increased the number of supporters, and raised the chance of making human rights education more acceptable to Muhammadiyah leaders and followers. Dialogue was employed to reduce active opposition to the implementation of the human rights education project. Indeed, participation, partnership, and dialogue are very effective ways to “maintain and mobilize current supporters”, “minimize active opposition”, “convert neutral parties and opposition”. (Scribner and O’Hanlon, 2000: 3-10).

The progressive group used the participation strategy to attract attention from the stakeholders within Muhammadiyah. In developing the human rights education curriculum, the progressive group involved the important elements of Muhammadiyah education stakeholders from the central to the district levels. All of them were involved in this process as writer team members, expert and executive editors, designer and illustrator team members, expert readers, and trainers (Thoyyar (a), 2008: 6). Their backgrounds were very diverse, from heterogenous religious ideologies and thoughts, to culture, to ethnicity, to gender, and also to social stratification such as education policymakers in Muhammadiyah School Education Board, teachers of Al-Islam, religious leaders, academicians or intellectuals, and human rights activists. (Thoyyar, 2008: 6).

Involving Muhammadiyah education stakeholders in the whole process of the project was an appropriate strategy. The Muhammadiyah Education Board, for instance, is key as the policymaker whose interest and influence relate to the revitalization of Muhammadiyah education. Involving Islamic religious teachers of Muhammadiyah schools was a real necessity for the success of Muhammadiyah education. Because the teachers had an influence in the change of curriculum and textbook, putting them as subject group of the program to reorganize the textbook was acknowledged as a rational choice and acceptable. Theoretically, an advocacy strategy that involves influencing stakeholders who have more interest from the beginning is acknowledged as an effective participation strategy that can empower them (Effendi, 2010: 52). Based on Effendi’s research, the strategy that involved a number of Muhammadiyah education stakeholders such as the Muhammadiyah Education Board from central to district levels and the teachers was very
helpful in strengthening human rights content and teaching methodology in Muhammadiyah schools and a key element in improving teacher’s capacities (Effendi, 2010: 53-54).

Furthermore, to maintain and strengthen the success of negotiation in introducing human rights education in Muhammadiyah schools, the progressive group built partnership with different elements within and outside Muhammadiyah. The Muhammadiyah Education Board together with Maarif Institute, for instance, had a partnership with the New Zealand Agency for International Development (NZAID) and Kompas-Gramedia (a well-known publisher) to publish the textbook more broadly (Interviews with Rezaulhaq and Thoyyar).

In addition, during the negotiation process, the progressive group minimized conflicts and active opposition within Muhammadiyah. It used the dialogue strategy in dealing with the different groups including the conservative group. According to Rezaulhaq, through a long series of meetings and dialogues with many people with the participation of invited experts or intellectuals, human rights practitioners, and victims of human rights violations, the views of the conservative group that initially refused human rights education and considered human rights as western product that contradict Islamic values, interestingly changed. For instance, in South Sulawesi, the local conservative group strongly refused human rights education. But after a long dialogue where the people saw and heard the testimony from witnesses and victims of human rights violations, they became aware and more open to human rights education (Interview with Rezaulhaq).

Conclusion

The human rights education model in Muhammadiyah schools is a hybrid in terms of content, and a replication in terms of pedagogy (teaching). In terms of content, the human rights education curriculum is the result of reconciliation of the human rights core values with the Islamic core values. Human rights education in Muhammadiyah schools has a strong theological basis, with the process of learning linked to a group of religious subjects such as belief (aqidah), and ethics (akhlaq), etc. This is the way by which human rights education has been incorporated into the Muhammadiyah school curriculum. The principles of Islamic Law (Maqashid al-Shariah) are thus important starting points in developing greater human rights aware-
ness among teachers and students. The *Maqashid al-Shariah* theory can be viewed as the shared platform where human rights principles and Islamic principles meet. The five core principles of the *Maqashid al-Shariah* theory introduced in the human rights education curriculum developed into six relevant principles, namely, freedom of religion and belief (*Hifz ad-din*), right to protection of life (*Hifz an-nafs*), freedom of thought and expression (*Hifz al-'aql*), rights to reproduction and child life (*Hifz an-nasl*), rights to property and work (*Hifz al-mal*), and finally, right to environmental protection (*Hifz al-biah*).

These principles have formed the basis of human rights education in Muhammadiyah schools, starting with initial efforts from 2005.

Other central conclusions of this study relate to (i) teaching, (ii) the aims of the curriculum, (iii) the debates between conservatives and progressives on human rights education, and (iv) the strategies used to ensure human rights education's adoption in the curriculum.

In relation to teaching, since 2007 human rights education has used various learning methods that attract and encourage students to be involved in learning more actively. These methods are mainly participative learning in character, which are also used generally in teaching human rights all over the world. However, in terms of teaching model, human rights education in Muhammadiyah schools uses the replication model that made the teachers gain the capability to shift the learning atmosphere from boring to an attractive one. According to Effendi, group discussion activities are most attractive to the teachers and students.

Human rights education in Muhammadiyah schools has had two primary goals in the context of curriculum and teaching development. First, the human rights education curriculum aims to improve both the vitality and quality of the school curriculum. These improvements were needed to address the situation of the Muhammadiyah movement in its local, national, and global contexts. Revitalization was to be achieved through textbook content renewal, teacher capacity development to achieve capability for effective delivery of the lessons in class, and provision of resources and supporting materials for the lessons to improve the substance and outcomes of teaching. Second, in terms of teaching development targets, human rights education aims to achieve three primary goals of learning: cognitive learning, skills-related learning, and emotional or affective learning. From this target, there is hope that students would develop more awareness of human
rights issues and improve their attitude and behavior in upholding human rights values.

The effort to reconcile Islamic education with human rights education has provoked a heated debate between conservative and progressive groups within the Muhammadiyah organization. The conservative group refuses human rights education by arguing that reconciling Islam and human rights makes Islam secondary to human rights principles, and this endangers the Islamic doctrine. The conservative group accuses the progressive group of misinterpreting Islamic doctrine in relation to human rights concepts. It claims that the progressive group forced Islamic teachings to accord with human rights, rather than the other way around. More specifically, the human rights education curriculum is criticized for including doctrines of pluralism that endangers the Islamic religious belief. The conservative group considers human rights as Western ideas; as tools for westernization that will spoil Islamic teachings. From this perspective, Islam and human rights cannot meet. Indeed, they should never meet because each has a different paradigm and different source for truth.

Unlike the conservative group, the progressive group is very confident in accepting a human rights perspective in Islamic education. It argues that human rights are already part of Islamic teachings, and that Islam and human rights share a common platform or set of values in relation to definitions of humanity that are universal. It considers the need to reconcile human rights education with Islamic education in order to reduce misunderstanding about Islam and the conflicts between Islamic principles and human rights principles. Therefore, the progressive group denies that reconciling Islam and human rights can be damaging to Islam. Human rights are viewed not as a Western ideology, but as a perspective, that can be related to Islam as a religion. Therefore, even though Islam and human rights may start from different positions, each can help equip the other. Overall, based on the evidence presented in this study, it does seem that Islam can support and be reconciled with human rights values. Theological and historical evidence, for instance, prove that Islam has a strong commitment to developing human rights awareness and reducing human rights violations. Therefore, in the contemporary era, the Muslim community has to participate actively in upholding human rights values.

The strategies in promoting human rights education sometimes face a difficult environment. Due to opposition by the conservative group and
others to human rights education, introducing it into the Muhammadiyah schools was not an easy task at the initial stages. Challenges came from within Muhammadiyah, mainly from the conservative group, and based on bureaucratic objections. The development of the human rights education curriculum has therefore involved a long series of steps involving educational stakeholders within Muhammadiyah, from grassroots to policymaking levels. The progressive group used various strategies to convince the Education Board and many others within Muhammadiyah that they should accept human rights education programs, and that human rights education was compatible with the wider values of the organization. A strategic approach to the negotiation was key to the success in introducing human rights education. This involved combining grassroots demands with Maarif Institute’s intellectual influence. The progressive group worked through the Education Board. They used available means to convince key people, including lay people, to take a different stand and to end their opposition to the introduction of human rights education in Muhammadiyah schools. Through such strategies, step by step, the paradigm shifted within Muhammadiyah. Gradually, through persuasion, but also through practical human rights education experience, people within the Muhammadiyah organization as a whole have become more open and more accepting of the new human rights education program.

This study shows that despite the controversy that took place within Muhammadiyah, the human rights education model introduced into the Muhammadiyah school curriculum between 2005 and 2010 has had many positive impacts. It helped develop human rights awareness among teachers and students. As a consequence, the policymakers within Muhammadiyah, especially those in the Education Board, should become even more active in the future in promoting human rights education in Muhammadiyah schools, beyond the three provinces of West Java, East Nusa Tenggara, and Central Sulawesi in Indonesia.

For successful introduction, human rights education has to avoid the more controversial issues of human rights. Counter-productive arguments should be avoided in the initial implementation of human rights education. In Muhammadiyah schools, the pluralism issue has provoked controversy, for example. Since controversies can consume valuable time and energy, relatively uncontentroversial issues should be the first themes or topics of hu-
human rights education, and should be based on local needs and accepted basic principles of Islamic education.

References


Human Rights Education in Indonesia: The Muhammadiyah Schools Experience


Endnote

1 Pesantren is a housing complex that includes the houses of the kiai (an expert in Islam) and his family, pondok (school), and a mosque. Pondok Pesantren means Islamic boarding school.
Quality Control on the Teaching of "A History of Democratic Kampuchea (1975-1979)" in Pailin and Banteay Meanchey Provinces

Khamboly Dy

The Documentation Center of Cambodia (DC-Cam) and the Cambodian Ministry of Education held a quality control evaluation in Pailin and Banteay Meanchey provinces on 20-27 February 2011. An evaluation team (Team) consisting of two DC-Cam staff members (Mr. Khamboly Dy and Mr. Sovann Morm) and two officials from the Ministry of Education (Ms. Neang Beng and Ms. Piseth Neary Seng) undertook the evaluation exercise. The Team observed seven classes and held twenty-two interviews with teachers, students, School Directors, officials of the Provincial Offices of Education and former Khmer Rouge cadres. At the end of each classroom observation and evaluation, the Team provided feedback and recommendations for improvement to the observed teachers and School Directors who in turn agreed to exert more efforts at ensuring a proper and wider teaching of Khmer Rouge history in their respective schools.

Evaluation Activities

The Team undertook a number of activities in Pailin and Banteay Meanchey provinces during the period of evaluation. Table 1 shows a summary of the evaluation activities done.

Table 1. Summary of evaluation activities

| Quality control project objectives | • Evaluate the effectiveness of the teaching of A History of Democratic Kampuchea (Democratic Kampuchea history textbook).  
| | • Evaluate the effectiveness of the teaching materials: (1) A History of Democratic Kampuchea as history textbook, (2) Teacher’s Guidebook and (3) Student Workbook.  
| | • Evaluate the integration of Khmer Rouge history into the daily regular teaching in schools. |
Means of evaluation  
• One-hour class observation  
• Interview  
• Survey

Tools for evaluation  
• Classroom observation checklist  
• Questionnaire for teachers  
• Questionnaire for students  
• Interview questions

Types of school  
• Schools in urban, rural and remote areas

Number of classes observed  

Average number of students per class  
• Between forty and forty-five

Approximate number of students with textbook  
• No student in Pailin has received the textbook, while about forty percent of students in Banteay Meanchey received the textbook

Approximate number of teachers with Teacher’s Guidebook and Student Workbook  
Only the teachers who participated in the DC-Cam training have guidebook and student workbook on hand

Approximate number of students with student workbook  
• No student has received the student workbook

Pre-evaluation Activities

Before undertaking the evaluation activities, the Team discussed the project with officials of the Provincial Offices of Education to seek their collaboration and approval. The Team presented documents and evaluation tools to the education officials and had them signed by the officials as proof of approval, a necessary measure that would ensure sincere cooperation from School Directors. These meetings also allowed the Team to learn about the educational situation in each province, the location of the schools the Team was going to observe, and information on the respective school officials and teachers.

In Pailin, the Team met with Mr. It Chea, Deputy Head of Pailin Office of Education. Mr. Chea said that most people in Pailin were former Khmer Rouge cadres with low education and were appointed to government positions including Provincial Governor, Deputy Governors, and Heads and Deputy Heads of all provincial offices by the Royal Government of
Cambodia for the sake of political stability and peace. But they have limited capacity to oversee the general operation of the education system in the province. Though the current Head of the Provincial Office of Education is a newcomer from Phnom Penh, the former Head and one current Deputy Head are former Khmer Rouge cadres.

According to Mr. Chea, some children of the Khmer Rouge cadres have received secondary school education and attended the teacher training school in Battambang province since 2007. The children of former Khmer Rouge cadres constituted twenty percent of the teachers, mostly in primary schools and lower secondary schools. But few former Khmer Rouge cadres and their children have become teachers in upper secondary schools. Most teachers of all levels in Pailin are from Battambang, Kampot, Banteay Meanchey and Takeo provinces. The total number of students in Pailin currently reaches over nineteen thousand. The table below shows the ten-year growth (2001 to 2011) of the number of teachers in Pailin.

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<th>Year</th>
<th>Total number of teachers</th>
<th>Female teachers</th>
</tr>
</thead>
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<tr>
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The extended interview of teachers and school officials who were former Khmer Rouge cadres or children of the former Khmer Rouge cadres facilitated the gathering of insights on how the project can be more effectively implemented at the school level. Mr. Choub Sambat, a Deputy Head of Pailin Office of Education, initially refused to talk until he learned about DC-Cam and the textbook. He was a former middle-ranking Khmer Rouge cadre in Phnom Penh in late 1970s.
Evaluation Results

Overall, the respondents (teachers, students, education officials and residents in the provinces visited) agree that teaching and studying Khmer Rouge history in a formal classroom setting is important in preventing the reoccurrence of such atrocities in the future. Although about eighty percent of residents in Pailin province are former Khmer Rouge cadres and the province itself was a Khmer Rouge stronghold until 1996, most interviewed teachers, students, and residents see the teaching of Khmer Rouge history in schools in a positive light. Mr. Mei Makk, former personal adviser to Pol Pot and currently Deputy Governor of Pailin, suggested that, “we should study [Khmer Rouge history in order] not to allow it to [happen] again, [and] second to see the real extent of the crimes. I agree to have it forever.” Based on the Team’s observation, the children of former Khmer Rouge cadres in Pailin, constituting more than half of the student population, maintain good relations with the other students and show positive attitude toward learning the Khmer Rouge history.

Evaluation of specific issues

The Team compiled a number of issues that affect the school system in general, and the teaching of Khmer Rouge history in particular. School officials and teachers in the schools visited by the Team discussed these issues.

Some of these issues are discussed below in summarized form.

I. General Observations

a. Khmer Rouge legacy and the effect of war on general education

Emerging from war only from 1996, people in Pailin are still struggling with illiteracy. Most interviewed teachers complain about the frequent absence of their students for a number of reasons. First, most parents who are former Khmer Rouge cadres do not value education. They ask their children to help in the farm. Being a farming region, most people in Pailin plant potatoes, beans and fruits to sell to Thailand. Even some well-off families do not encourage their children to study. After finishing grade 12, children are encouraged to engage in farming because it generates income. Second, many students drop out of school or take one-year leave from school to
work in Thailand. The family’s economic difficulties force students to work in Thailand. They mostly do housework, plant rice, and work in factories. Third, due to the border conflict between Cambodia and Thailand that led to exchange of gunfire, some parents do not allow their children to come to school. People have been traumatized by wars, conflicts and killings many times in the past. This trauma still affects them mentally. They do not want to lose their family members again.

**Knowledge that students want**

Most of the time, teachers teach only those that are found in the textbooks. Teachers rarely use outside materials to enhance their teaching. However, when teachers use K-W-L (What I Know, What I Want to Know, and What I Learned) method, students raise many questions that the textbooks do not cover. In order to answer the questions in the W column, teachers need broader knowledge and have to make use of outside materials. The content in the social study textbooks should be the foundation that teachers can refer to for guidance, but not a doctrine that teachers cannot deviate from. Students’ knowledge should not be confined to the content of the social study textbooks.

**Dealing with children of former Khmer Rouge cadres**

In one school, teachers have difficulty educating the children of the former Khmer Rouge cadres. Some of these students are physically bigger than the teachers. Probably due to their low education and low social morality, they speak and behave arrogantly to the teachers. However, the teachers see the problem as a challenge to overcome. They do not blame these students considering their experience of living in the forest in the 1980s, fighting in the war almost everyday, and running from place to place to deliver weapons to the Khmer Rouge armed forces (“mobile living”). At that time, the students lived with inadequate food and diseases without proper medical treatment. Lacking proper education, they developed attitudes and social practices that differ from the usual attitude and practice of others in the community.

**Appropriate method to fit the classroom situation**

Tables and chairs that cannot be moved make group activities for students difficult. This is the situation facing the teachers in Chhnour Meanchéy
Secondary School. The teachers resort instead to making students work in pairs, which does not require moving tables and chairs. This method is seen as effective, keeps order among students, and allows the classroom process to proceed smoothly.

**Teachers’ capacity**

Schools in the remote areas do not have enough qualified teachers to provide quality education. For instance, Hun Sen Sala Kroa Secondary School does not have enough teachers who graduated from the university. To cope with this problem, the school has to ask primary school teachers to teach secondary school students. Mr. Kim Leng, the School Director, said that when he arrived in 2000, the secondary school was located in the primary school compound, and this strongly affected the quality of education. In 2003, he formed a secondary school committee and requested the Ministry of Education to provide a plot of land to build the secondary school compound. A grant from the Asian Development Bank supported the construction of this secondary school. But the school still faces the lack of qualified teachers. In some cases, history teachers teach geography, which is not their expertise.

**Lack of training and teaching materials**

Mr. Kim Leng said that curriculums for grades 11 and 12 were changed in 2011. However, teachers do not receive training on the new curriculums. Teachers totally depend on the *Teacher’s Guidebook*. They ask each other on the points that they are not clear about.

**Teachers’ limited knowledge on Khmer Rouge history**

Some teachers are happy to have team teaching in the classroom because this helps them answer political questions from the students. As observed, teachers possess limited knowledge on Khmer Rouge history and are not able to satisfactorily answer questions from students. Moreover, teachers dare not answer some political questions for fear of being blamed by higher education officials. Whatever the circumstance, students’ interest in studying Khmer Rouge history in schools depends mostly on teachers’ explanations. If teachers were not able to give clear answers, students would not have further questions, and thereby cannot generate more interests.
Young versus old teachers

Credibility in explaining the Khmer Rouge history to the students differs between young and old teachers. The young teachers explain the history within the framework of the textbook while the old teachers explain it from their personal experiences as the Khmer Rouge regime’s survivors. The old teachers’ stories are very powerful in getting the interest, and satisfactorily answering the questions, of the students.

The teachers’ living condition affects teaching

Most newly-recruited teachers have no proper place to live in. Many of them stay inside the classrooms, sleeping on the floor. Those who are a bit better-off rent small houses and share rooms with several colleagues. The teachers’ poor living condition lowers the students’ respect for them. Some teachers say that they are embarrassed being seen sleeping on the floor by their students. These teachers complain that poor living condition and low salary are the biggest problems for teachers. Teachers receive an average salary of sixty to one hundred US dollars per month. This hard living condition discourages teachers from working for quality education. Some teachers honestly admit that they would like the examination period to arrive soon so they could sell materials that prepare the students for the examinations. The Ministry of Education has banned this activity.

Some teachers focus more on private business activities that take away time for reading materials or doing research to enhance their knowledge and expertise. Some teachers in Pailin also engage in farming. At the same time, the schools do not have enough materials and core books to help the teachers. Some government textbooks are sent to schools (in the middle of the school year) without the corresponding teacher guidebooks. Teachers have to use the old teaching materials they have on hand. As a result, students learn less.

On the other hand, the influence of modern technology and materialism on many students decreases their incentive to study. Some students play with their cellphones and MP3s during study hours. In addition, students skip classes to date fellow students in celebration of foreign holidays such as Valentine’s Day and Christmas Day.

Cooperation between teachers and the villagers

Due to their problems, the teachers in Hun Sen Sala Kroa Secondary School seek support from the people in the nearby communities whose chil-
II. Observations of Students

Children of the former Khmer Rouge cadres express positive attitude toward studying Khmer Rouge history. They dislike the regime and do not want to see the same atrocities happening in their country again. Moreover, they want to know the extent of suffering that Cambodian people endured at that time. They believe that the regime was cruel and brought a lot of hardship to the people. However, they also believe that their parents who are former Khmer Rouge cadres are good people, and they do not want see any friction among Cambodians. These students do not see their parents as former Khmer Rouge cadres, but simply as Cambodians. Some children of the former Khmer Rouge cadres claim that they want to see more dissemination of Khmer Rouge history to the public.

Students in Hun Sen Mongkul Borei Secondary School in Banteay Meanchey province show great interest in studying Khmer Rouge history. A teacher, Mr. Bun Yoeung, teaches Chapter 3 of the textbook entitled “The Khmer Rouge Come to Power.” He gives a bunch of questions to students who spontaneously give their answers in return. Students are interested in this chapter. Many students take turns to answer the questions. Some of them are able to summarize the whole chapter. Overall, students in his class understand considerably the historical and social contexts of the coming to power of the Khmer Rouge. At the end of the class, teachers ask the students to ask questions. Their questions include: what were the relationships between the Khmer Rouge and China (referring to photos that show Chinese advisers)? How could the Khmer Rouge win over the Khmer Republic? Vietnam helped the Khmer Rouge, why did the two countries fight each other later? Why did the Khmer Rouge kill intellectuals? Who created the Khmer Rouge and for what purposes?

II. Integration of Democratic Kampuchea History Commentary

All teachers and School Directors agree that Khmer Rouge history should be included in the Ministry of Education’s social study textbook so that teach-
ers are able to teach Khmer Rouge history in their classes on a regular basis. Otherwise, teachers will extract part of A History of Democratic Kampuchea textbook and integrate it into their teaching according to their will and available time. Teachers claim that too much integration will affect the program of the Ministry of Education that requires them to finish the entire social study textbook within the academic year. Most teachers say that they hardly finish the Ministry of Education’s social study textbook on time, so they are not able to integrate Khmer Rouge history much. They can only talk about Khmer Rouge regime for about two to three minutes at the end of the session, and this yields little impact on student’s understandings on what happened during the Khmer Rouge period and why it happened.

The inclusion of part of Democratic Kampuchea history textbook into the Ministry of Education’s social study textbook only serves to limit the scope of teaching of this part of Khmer history. Khmer Rouge history can be integrated not only in History subject but also in other subjects such as Khmer Studies, Citizen Morality, Geography and other related social study subjects. The better option is to recommend to the Ministry of Education the issuance of a formal instruction to teachers who teach these subjects to integrate Khmer Rouge history in their teaching. To be specific, the instruction can address or suggest the points and places where teachers can integrate Khmer Rouge history in the different subjects.

In addition, some teachers suggest that DC-Cam and the Ministry of Education provide several documentary films to all relevant teachers. Teachers claim that film is a powerful means to educate students about one particular subject. The films can help teachers explain the content of the Democratic Kampuchea history textbook more effectively.

From the classroom observations and interviews with teachers in Pailin and Banteay Meanchey province, the Team suggests two ways of integrating Khmer Rouge history more effectively into the school lessons:

1. Homework: Homework gives students the chance to read the Khmer Rouge history textbook at home or in the library. Teachers can collect the answers to homework questions and discuss them with the students in the class. This can be done during the first five to ten minutes at the start of the class.

2. Devoting one lesson objective to Khmer Rouge history: Usually, each lesson contains at least three objectives. Regardless of the lesson being taught, teachers can make teaching of Khmer Rouge
history as one of these objectives. They can use the comparative method, for example, to compare and contrast between Myanmar’s economy and that of Democratic Kampuchea.

However, while the teachers are able to follow these suggestions, they still encounter some challenges. Currently, the Ministry of Education introduces new social study textbooks with additional content and lessons while the number of allotted hours remains the same. Teachers may face difficulty in giving time to integrating Khmer Rouge history into their regular teaching. According to some interviews, teachers of all subjects have never been able to finish their respective syllabuses on time.

A teacher from Hun Sen Mongkun Borei Secondary School suggests that more teaching of Khmer Rouge history in schools can occur if teachers taught one whole chapter from *A History of Democratic Kampuchea* textbook or integrate Khmer Rouge history within three regular lessons from the Ministry of Education’s social study textbook. Doing so, teachers may be able to finish the eleven chapters from *A History of Democratic Kampuchea* textbook within one academic year.

In order that students grasp the basic knowledge on Khmer Rouge history by the time they graduate from secondary school, teachers should begin to integrate the history from grade 9 up to grade 12. The integration should not be confined only to History subject.

**III. Textbook, Guidebook and Workbook Availability and Use**

Roughly estimated, only about twenty percent of students in Pailin and Banteay Meanchey provinces receive copies of Khmer Rouge history textbook. Teachers claim that more copies of the textbook have to be distributed to all schools across the country in order to have wider learning of the Khmer Rouge history in the country. Teachers and School Directors alike suggest keeping copies of the textbook in school libraries for longer use of current and future batches of students. They suggest distributing copies of the textbook in proportion to the number of students in each school. For example, if a school has one thousand students, it should have at least five hundred to seven hundred copies of the textbook. If a school has three thousand students, the school should obtain at least two thousand five hundred copies of the textbook.
Moreover, in lending the textbook, the schools should give priority to students in grades 9, 10, 11 and 12. The schools have to collect the copies back at the end of each academic year.

The copies of the *Teacher’s Guidebook* and the unpublished *Student Workbook* have been distributed only to teachers who have received training on Khmer Rouge history. The rest of the teachers do not have these teaching materials and rarely integrate Khmer Rouge history into their teaching. For the subsequent trips, the Team should bring copies of the guidebook and workbook for the school libraries so that teachers who have not had the chance to attend the training on Khmer Rouge history are able to take advantage of these teaching materials. Moreover, the teachers who did not have the training can seek advice from the trained teachers on the points they do not understand. This will encourage the teachers who did not have the training to integrate Khmer Rouge history into their regular teaching.

IV. Community Observations

a. Perspectives of former Khmer Rouge cadres

The Team observed two different perspectives regarding discussion of Khmer Rouge history among the former Khmer Rouge cadres. Those who are in the government position do not want to recall their Khmer Rouge background, which they may find shameful. In contrast, the ordinary former Khmer Rouge cadres sincerely tell their story with little attempt to hide information.

Mr. Choub Sambat (Deputy Head of the Pailin Provincial Office of Education) and Mr. Ly San (Director of Hun Sen Tep Nimet Secondary School) initially refused to be interviewed by the Team. Mr. Sambat did not want to talk about his story initially, though he relented later on and narrated some of his experiences. Mr. Ly San wanted to hide his whole story. Instead of answering questions, he commented that “[R]ecalling the history will create revenge and hatred.” To him, most former Khmer Rouge cadres do not want to talk about their past experiences because they are about loss of face and humiliation. They want to be completely separated from the past. Mr. San added that he loved the integration policy of the government that preserved all the positions and works for former Khmer Rouge cadres in Pailin. Mr. San said that he had never told his story during the Khmer Rouge
In contrast, the ordinary former Khmer Rouge cadres welcomed the Team very well. Mr. Soam Chhay and Mrs. Tam Chantho, a couple living in Bor Yakha commune, Pailin District, Pailin Province, agreed to an interview. They described their life during the Khmer Rouge period, when they were workers in the factories in Phnom Penh. In 1979, they escaped to Pailin with the Khmer Rouge leaders and worked as soldiers. Mr. Chhay was injured many times during the encounters between the Khmer Rouge guerrilla forces and the government forces of the People's Republic of Kampuchea (PRK) in the 1980s. They claimed that they did not commit any crime during the Khmer Rouge period and they did not wish to become Khmer Rouge cadres. However, they had to adapt themselves to the situation and political leadership in order to survive in the Khmer Rouge society. The couple agreed that teaching and learning Khmer Rouge history in the classrooms were important in preventing such crimes in the future.

b. Knowing Khmer Rouge history as a way to discipline children

People usually use the Khmer Rouge experience to discipline and educate their young children on the prevailing social practices. Parents usually tell children, “You are lucky to be born in this regime. In my time, life was so hard.” In some cases, parents use the hardship during the Khmer Rouge regime to encourage their children to study.

c. Seeing the former Khmer Rouge cadres in proper perspective

The Team interviewed Mr. Mei Makk, former personal adviser to Pol Pot and now Deputy Governor of Pailin Province, to understand the attitudes of former middle-ranking Khmer Rouge cadres toward teaching Khmer Rouge history in the classroom.

Mr. Makk sees the former Khmer Rouge cadres as people who committed atrocities during the Khmer Rouge regime, but he sees them also as victims. Having been victimized for many years, they are fed up with discussing Khmer Rouge and would like to focus on their livelihood instead. He explains that being illiterate, the Khmer Rouge corrupted their thinking and beliefs. The Khmer Rouge cheated them and yet they still followed them. They were used like cows and animals. The senior Khmer Rouge officers would say:
If people were educated, they would run away from the political line and the leaders. So we should not let them obtain high education. We don’t have to establish schools. It is easier to use the illiterate.

But under the leadership of H.E. Y Chhean (now Governor of Pailin Province) and others, they decided to defect from the Khmer Rouge. The government of Samdech Hun Sen introduced a “win-win” policy, which they tested and found to be true. They came out and survived. The government did not do anything to harm them.

Their defection was also due to the oppression of Pol Pot and Son Sen. They witnessed how the people were constantly oppressed and deprived of things they needed. Pol Pot and other senior leaders acquired many cars, land, and other means of livelihood while they did not even have a bicycle or motor. All their properties were put under a collective use system.

Mr. Makk mentions that he was a school teacher and also a leader in the 1980s when the Khmer Rouge regime was fighting the Royal Government of Cambodia. He was made responsible for analyzing the military situation within Cambodia and beyond and reported his analysis to Pol Pot. He says that if the Khmer Rouge regime would come back to power, he would be the Chief of the General Staff and assistant to Son Sen. He remembers Pol Pot saying that as long as Vietnam did not withdraw from Cambodia he would blow up the Royal Government of Cambodia like a paper. But the Royal Government of Cambodia became stronger, China stopped supporting the Khmer Rouge regime and Vietnam withdrew from the country. He reported this to Pol Pot. But Pol Pot believed that Vietnam would never withdraw from Cambodia. Pol Pot said that “Vietnam was addicted to Cambodian food.”

On the study of the history of the Khmer Rouge regime as part of the national school curriculum, Mr. Makk says:

It is good, indeed. If we don’t study, how can we know? If we don’t know [the past], the situation may go that way again, and our country will lose a lot. We have to develop our country through ... globalization.... Secondly, when we study, we can see the extent of the crimes [committed by the Khmer Rouge regime], and it can heal people’s mental wound. Otherwise, people will continue to be angry for several generations. Moreover, we don’t want that kind of regime to come back....The tribunal² shows that leaders cannot do anything as they wish. With the
hybrid tribunal, all leaders have fear. But some people still commit corruption. However, they are also worried....

On the use of the *A History of Democratic Kampuchea* textbook, Mr. Makk says that having the book in smaller size

... would be great. You can print it into several parts and introduce them to schools. Students study part by part. Don’t be ambitious. If you are too ambitious, it may be hard for students to accept. It can be studied part by part. For example, one semester, how many parts do we plan to finish? It is important to study. I don’t know what to say to express more than that. But I agree to have it forever. Moreover, you and other young generations have work to do...

V. Impacts, Challenges and Lesson Learned

a. Sensitivity of the Khmer Rouge issue

Pailin was integrated into the Royal Government of Cambodia in 1996 when Ieng Sary, former Deputy Prime Minister and Foreign Minister of Democratic Kampuchea, defected to the government and brought with him thousands of members of the Khmer Rouge armed forces and people. Roughly, about eighty percent of the provincial residents are former Khmer Rouge cadres. Most of the students are children of these former cadres.

In this case, the interviewer has to use proper and appropriate words in interviewing the former cadres and their children in order to avoid hurting their feelings. It is reported that when some non-governmental organization (NGO) workers interviewed the students about people’s life in general and their parents’ criminal acts during the Khmer Rouge period, some students felt bad. They felt bad learning that their parents killed people and committed a lot of crimes during the Khmer Rouge regime. One student was traumatized by the stories learned and began to develop a mental problem. The student was brought to the hospital for treatment.

Some new teachers say that they never use the word “Khmer Rouge” when they communicate with the villagers. Teachers usually refer to the Khmer Rouge period as the “three-year period.”

The Deputy Head of Pailin Office of Education, Mr. It Chea, also suggests a careful choice of words in interviewing students to avoid the same
problem. He tells the case of some former Khmer Rouge cadres who were furious with the interviewers and shouted: “What’s the damn point of talking more about this? I am Khmer Rouge. What do you want to do to me? Go ahead and do it.”

From the interview of Mr. Chea, the Team learns that the Pailin Provincial Office of Education has to seek advice from the Provincial Governor before deciding whether or not to allow the Team to observe and do evaluation in the province. This is a sensitive point that the Team has to pay much attention to when doing evaluation in other former Khmer Rouge strongholds. It also shows that the sensitivity to the Khmer Rouge issues is still strong in former Khmer Rouge areas.

b. Transferring knowledge on Khmer Rouge history and teaching methodology

DC-Cam has held five teacher training workshops including one national teacher training, one provincial teacher training, and three commune teacher training. School Directors, Deputy Directors or administrative staff of the Provincial Offices of Education constitute about thirty percent of the participants. They return to schools to do administrative work, and not teach. These participants have little impact on the integration of Khmer Rouge history into the classroom teaching. The Team advises these school officials to share documents, knowledge and experiences gained from the training with the teachers who are currently teaching in the classrooms.

c. Impact on teachers’ performance

Most School Directors say that they are happy that the Team comes to observe classroom teaching, which alert the teachers. With the presence of the Team, teachers are better prepared. Moreover, the Team gives advice on how to improve teaching that adds to teachers’ knowledge.

d. Pride of teachers

Senior teachers, who obtained Baccalaureate Degree (secondary school degree) from the 1960s onward, are proud of themselves. They rebuilt the education system after the fall of the Khmer Rouge in 1979, when the education system was at its zero point. They gathered educated people who survived the Khmer Rouge regime and formed community schools in various parts of the country before the formal reestablishment of school system
by the new government. Therefore, the Team does not only show respect to them but also acknowledge their efforts and achievements.

e. Effect of secondary book on students’ knowledge

Cambodians who have migrated to other countries published several books about the Khmer Rouge. The books about survivors’ stories are good for the general knowledge of students. However, some books contain political biases and propagandas that corrupt the students’ critical thinking. One student read such a book and came to believe that there must be someone behind Pol Pot and other Khmer Rouge senior leaders, and that person was the one who ordered the killing of millions of people.

Conclusion and Recommendations

In general, the observed teachers in Pailin occasionally integrate Khmer Rouge history into their teaching. The character of Pailin province as the former Khmer Rouge stronghold with the majority of residents being former Khmer Rouge cadres produces certain reluctance on teachers to talk about Khmer Rouge history. Moreover, teachers are discouraged by the poor living condition and students’ poor attention toward education. Most often, students take a very long leave either to work in Thailand or to help their parents in farming. In Banteay Meanchey, teachers integrate more the Khmer Rouge history into their teaching. However, most often the integration efforts are in the form of brief descriptions at the end of the sessions.

To have an effective integration of Khmer Rouge history, there has to be an official instruction from the Ministry of Education, and the instruction has to clearly identify the sections and places where teachers can make the integration. The instruction should also give several alternatives so that teachers have options to choose from according to their available time and situation. For example, teachers who are not able to finish on time the social study textbooks of the Ministry of Education can give homework on Khmer Rouge history to students and discuss the answers at the beginning of the next session in the class.

Most observed teachers are able to use the teaching methods they gained from the training. The popular methods are K-W-L chart and group discussion. Teachers use big papers and write the objectives and questions and stick them on the board so that they save time for student-led activities.
However, all schools lack copies of the *History of Democratic Kampuchea* textbook, *Teacher’s Guidebook* and *Student Workbook*. Each school needs at least five hundred copies of the textbook for the library. Big schools may need at least one thousand copies. Both School Directors and teachers suggest that copies of the textbook be kept as property of the schools rather than let students own them. The schools can lend the books to students and collect them back to be used by the next batch of students.

Teachers, students and some members of the general populace including former Khmer Rouge cadres and their children believe that teaching Khmer Rouge history in school is important, while considering some objection from former Khmer Rouge cadres who are currently working in various offices of the province. The young generation of Cambodians needs to know and understand what happened during the Khmer Rouge period so that they can help bring about wider national reconciliation, peace and the prevention of future genocide. As the former personal adviser to Pol Pot Mr. Mei Makk say,

> I agree to have [the teaching of Khmer Rouge history in school] forever.

**Endnotes**

1. The formal name of the Ministry of Education is Ministry of Education, Youth and Sport.
2. This is formally called the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea (Extraordinary Chambers or ECCC).
Annex

Lesson Plans Using A History of Democratic Kampuchea Textbook

I. Chapter 3: The Khmer Rouge Come to Power

Teacher: Mr. Bun Yoeung
School: Hun Sen Mongkul Borei Secondary School, Grade 12
Mongkul Borei District, Banteay Meanchey Province
Duration: One hour
Date: February 25, 2001

Objectives: enable the students to
1. Describe the coming to power of the Khmer Rouge
2. Explain the historical and social context of the establishment of the Democratic Kampuchea
3. Define some of the key words in the chapter 3.

Teaching materials: A History of Democratic Kampuchea textbook

Process and procedure:

Step 1: Teacher recalls the previous lesson by asking students some questions related to China. He links communism to the Khmer Rouge regime. Teacher asks several questions: What was the last lesson you studied? After expelling the Japanese troops out of the country and winning over Chiang Kai-Shek’s forces, did Mao Zedong declare the country as under communism or democracy? What is the color of the communist Chinese flag?

Step 2: Two students read chapter 3 on pages 16-18.

Step 3: Teacher asks students some questions to learn historical facts: When did Phnom Penh fall into the hand of the Khmer Rouge? What uniform did the Khmer Rouge soldiers wear? What did the Khmer Rouge declare on radio after occupying Phnom Penh? What reactions did the people have? Where did foreigners and some Cambodians take refuge? What did the Khmer Rouge do to them at that time? Where was Marshal Lon Nol at that time? What did the Khmer Rouge do to the people living in the city? What did they do on patients in the hospital?
Step 4: Teacher asks students to summarize chapter 3.
Step 5: Teacher asks students to discuss the following question: What are the effects of the evacuation on the people? Teacher divides students into four discussion groups.
Step 6: Teacher gives homework to students to answer the following questions: How do the Khmer Rouge acts affect the emotion of the Cambodian people? Do you want Democratic Kampuchea regime to return? Why?

II. Geographical Discovery and the Expansion of Colonial Regions of the Europeans

Teacher: Lon Sokly, Poi Pet Secondary School, Grade 9
School: Poi Pet City, Banteay Meanchey Province
Duration: 1 hour
Date: February 26, 2011

Objectives: enable the students to
1. Recall their prior knowledge through teaching the lesson on the geographical discovery and the expansion of colonial regions of the Europeans
2. Explain the importance of the reasons that led the Europeans to make the adventure and try to divide the world among them
3. Create the spirit of unity among them to protect their motherland and to preserve peace.

Teaching materials: History textbook and K-W-L chart

Process and procedure:
Step 1: Teacher recalls the last lesson and introduces the objectives of the class for the day.
Step 2: Teacher introduces the K-W-L method and explains the way to use this method. Students then fill in the K column on what they already know about Khmer Rouge history.
Step 3: Teacher asks if students want to know anything else related to the lesson. Then, teacher asks students to fill in the W column.
Step 4: Teacher asks students to read sections in the textbook to find the answers to the questions in the W column.
Step 5: Teacher asks students to write what they have learned from the reading and
fill in L column. Teacher asks more questions to summarize the students’ learning: Do you love your country? Do you love peace?

Step 6: Teacher summarizes the lesson and asks students to copy the answers from the board into their notebooks.

III. World War II (1939-1945) and the Establishment of the United Nations

Teacher: Song Somalet, Bor Yakha Lower Secondary School, Grade 9
School: Bor Yakha District, Pailin Province
Duration: One hour
Date: February 21, 2011

Objectives: enable the student to
1. Describe the causes of World War II and those who stirred up the war
2. Describe the spread of World War II.

Teaching and learning materials: Teacher’s Guidebook and Student Workbook

Process and procedure:
Step 1: Teacher checks classroom’s sanitation, students’ attendance and discipline. Teacher recalls the previous lesson about World War II by asking questions: What lesson did you study last time? When did World War II start? When did it end? In World War II, did Germany win or lose the war? When was the United Nations established?

Step 3: Teacher asks students to examine the photo on page 153 of the Student Workbook. Then teacher asks students to read sections A and B on pages 153-154. After that, teacher explains the meaning of the book sections.

Step 4: Teacher asks comprehension questions to summarize the students’ learning: What year did World War II start? What country stirred up this war? Who was the German leader who led Germany to war? What year did Britain come to war with Germany? When did Germany start to invade the Soviet Union?

Step 5: Teacher gives homework to students. Teacher asks students to read sections C, D and E of the textbook for next session.
The Development and Expansion of University-based Community/Clinical Legal Education Programs in Malaysia: Means, Methods, Strategies

Bruce Lasky* and Norbani Mohamed Nazeri**

Beginning in 2003, the not-for-profit international human rights organization Bridges Across Borders Southeast Asia Community Legal Education Initiative (BABSEA CLE) began focusing on assisting in the development and expansion of university-based community/clinical legal education programs1 in Southeast Asia. Since that time, and as a result of this focus, university-based CLE programs have been developed or expanded in Thailand, Malaysia, Cambodia, Viet Nam, Indonesia and Laos, with a continuously growing network of universities, both nationally and regionally. One of the flagship achievements of these activities has been the successful establishment of an accredited CLE program in Malaysia at the University of Malaya.

This article identifies strategic next steps in the development of this CLE movement within Malaysia, as well as its connection to institutions regionally throughout Southeast Asia and how the CLE movement intends to broaden its reach both within Malaysia and internationally.

Bridges Across Borders Southeast Asia Community Legal Education Initiative

Bridges Across Borders Southeast Asia Clinical Legal Education Initiative (BABSEA CLE) is an international access to justice, legal education organization, that focuses on ethically oriented legal capacity development and community empowerment. Since 2003, BABSEA CLE has been working collaboratively with universities, law students, law faculty, lawyers, members of the legal community, and justice related organizational partners to develop CLE and legal clinic programs throughout Southeast Asia. These programs and clinics assist communities, provide legal aid services and simul-

*Founder and Director of the Bridges Across Borders Southeast Asia Community Legal Education Initiative (BABSEA CLE).
**Associate Professor of the Faculty of Law, University of Malaya.
taneously help build the next generation of social justice, pro-bono minded champions.

**Clinical Legal Education Defined**

Clinical legal education is a progressive educational system most often implemented through university-based faculty of law programs to help develop better-trained, more socially conscious ethical lawyers. Yet, while this type of educational program is often implemented by law faculties, it is not limited solely to such institutions and can readily be practiced by a wide assortment of other faculties and in interdisciplinary programs.²

Clinical legal education is a process whereby students learn by doing. It is an experiential problem solving based model, in which students actively involve themselves in either real client/personal interaction or simulation lessons set up to mirror real client/personal scenarios. The process is conducted under the supervision of experienced law clinicians and legal practitioners. As a teaching device, this type of experiential problem-based learning is considered a highly effective means of adult learning where, unlike in rote memorization situations, students can learn and retain a vast amount of what is taught. The use of this interactive method of teaching focuses these students on becoming more able, thorough and ethical advocates, solicitors, governmental and private employers/employees, as well as global citizens.

**The Goal of Clinical Legal Education**

What are the goals of Clinical Legal Education? Clinical Legal Education seeks to achieve multifaceted goals. Although this list is not exhaustive, some of these goals include:

a) Providing a progressive method of education that focuses on students learning and improving skills that they will utilize as attorneys and in other professional positions. These skills include those abilities needed to effectively represent clients through the use of ethical value-based actions.

b) Applying experiential learning methods with students to give them the opportunity to learn more effectively and apply what they learn to actual realistic situations in a way that traditional teaching, through a lecture-based system, can never do.
c) To provide “back up” legal services and other services for indigent and marginalized community members who may not have an alternative access to the legal and other support systems.

d) Developing within students the idea of public interest service, with a simultaneous goal of formulating and increasing an ethically aware, proactive community.

e) Providing ways and means for clinical professors to make important contributions to the development of scholarship on skills and theories of legal practice that can provide closer links between the legal bar and the academy.

f) Strengthening civil society through supporting lawyers’ responsibility and providing legal services to the vulnerable who find it hard to access legal services.

Clinical Legal Education is a fervent mechanism which can be used to reach these aspirations as it both helps to instill a public interest centered character within students and then pragmatically builds on this character to professionally train the students, via experiential teaching methods, how to reach such objectives.

Clinical Legal Education exposes students to the actions and inner workings of communities and in doing so, gives these students insight into issues affecting marginalized groups of persons.

Through this exposure, students begin to understand and learn that they have the ability to make a positive societal difference through their skills as advocates and educators.

The Development of Clinical Legal Education in Southeast Asia and BABSEA CLE’s Role

Clinical legal education is somewhat new to Southeast Asia. The basic model of clinical legal education, simply defined as students and university faculties somehow involved in the provision of basic legal consultation services, has existed in some Southeast Asian countries for more than two decades. More than twenty-five years ago, Thammasat University in Bangkok established a clinic that focused on providing a broad variety of legal services to the public. Other Thai universities, such as Chiang Mai University (cmu), followed Thammasat University’s lead and model and created programs centered on providing free legal advice and consultation to members of the
community. Established in 1994 and staffed by students and professors on a volunteer basis, the CMU program not only provides free legal counselling to the community, but also serves the additional function of instilling the idea of duty and public service into the minds of the participating law students. Similar types of non-credited, voluntary legal aid or legal service clinics have been established at a variety of universities in Indonesia, including the University of Indonesia in Jakarta, where students and professors work with actual clients. A number of other programs allow for students to work alongside lawyers at legal aid societies as a type of internship experience. In Malaysia, limited clinical programs began more than twenty years ago at Universiti Teknologi MARA, where final-year students learned lawyering skills through a simulated program requiring them to work in a mock legal firm or clinic.

While the Philippines has had clinics for more than two decades, initially supported by the Ford Foundation, most other clinic type programs existing in the region were more service-related clinics, with little to no jurisprudential pedagogy being used, and without a specific focus of working with marginalized and vulnerable communities. During this period, while there was some international support for more modernization of legal education in Southeast Asia, this aid was centered around the more traditional legal education models and not Clinical Legal Education. This began to change during the early part of this decade with the development of a Clinical Legal Education program in Cambodia with the help of the Open Society Justice Initiative and Bridges Across Borders Southeast Asia Community Legal Education Initiative, as well as in Indonesia, and more recently in Vietnam, where the United Nations Development Program is now fully engaged in advocating the support of CLE initiatives.3

Despite the existence of all these programs, there was no consistent clinical legal education model that provided both a social justice mission and simultaneously integrated the program into an accredited legal education course—with the exception of the Philippines. Strongly influenced by developments in the United States, the clinical movement in the Philippines was much more expansive than those of its neighboring countries, taking root first at the University of the Philippines and then spreading outwards to universities such as the Ateneo de Manila University. The structured programs in the Philippines, unlike those at law faculties elsewhere in the subregion, were not only incorporated into the university curriculum, but also
charged with the mission of providing much-needed legal services to socially vulnerable, marginalized, and economically deprived members of the community. These clinical programs and the schools which incorporated them are currently involved in an almost-religious mission to spread clinical legal education throughout the country, with some schools making clinics a mandatory course and others setting them up as an elective subject.

More recently, the model adopted in the Philippines—once an anomaly in Southeast Asia—has been recognized increasingly as an effective means of creating a more social-justice-minded legal profession and a more progressive legal education pedagogy. For example, Pannasastra University of Cambodia (PUC) established a fully accredited, social-justice-oriented, clinical program in 2003 with support from the Open Society Justice Initiative (OSJI), which had a long history of assisting in the development of clinical legal education in Eastern Europe and Africa, and with the support of BABSEA CLE.

PUC’s clinical program began as a two-section clinic, with one section involved in Community Legal Education activities—often referred to as Street Law—and the other section working as a live-client legal services clinic where students worked with a local non-governmental organization (NGO) to provide legal aid services to indigent persons accused of crimes. The strategy was to establish this type of program and then use it as a demonstrative model to promote clinical legal education within Cambodia and in neighboring countries.

By late 2005, a significant number of outreach activities had occurred in nearby countries, including Thailand, Indonesia, Laos, Malaysia, Viet Nam, and Singapore. Potential additional partners and supporters had been identified, and other organizations began to show interest in the development of clinical legal education in select Southeast Asian countries.

All of these activities resulted in the First Southeast Asia Clinical Legal Education Conference held in Phnom Penh, Cambodia, in November 2005. The conference, using the PUC Legal Clinic as a type of model, provided a forum to discuss opportunities and challenges for creating clinical programs at Southeast Asian universities, as well as the role of clinical legal education in promoting access to justice and a culture of pro bono service. Aimed at fostering an environment in which participants could exchange ideas for promoting clinical programs, the conference was attended by more than eighty representatives from universities, the legal community, and Southeast
Asian civil society—as well as regional and international experts on clinical education and access to justice. Many who attended came from countries in Southeast Asia interested in establishing clinical programs, while others were already engaged in clinical legal education and were interested in expanding their programs to include both a social justice theme and an accredited course program.

A companion workshop to the Phnom Penh conference—the First Southeast Asia Clinical Legal Education Training of Trainers Workshop—was held at the Ateneo de Manila University in Manila in early 2007. Similar to the first conference in Phnom Penh, the Manila workshop acted as a means of training nascent clinicians, focusing on the development of clinical programs, clinical teaching methods, and administrative skills. The workshop also served as an opportunity to expose the participants to, and develop linkages with, more established clinical programs, further cultivating network contacts among clinicians in the region initiated at the Phnom Penh conference.

Both the Phnom Penh and Manila events seem to have achieved many of their desired objectives, having played a part in the establishment of a number of additional accredited social-justice oriented clinical course programs. For example: the University of Malaya launched the first accredited clinical program in Malaysia in 2008; in 2009, cmu, after operating a completely volunteer supported, in-house consultation clinic for fifteen years, approved and implemented a two-section, fully accredited clinical program consisting of both an in-house consultation clinic and a parallel Community Legal Education section; and in 2009 the National University of Laos Faculty of Law and Political Science began working on having its Community Legal Education program approved to be included as one of the selective options for its mandatory student field studies requirement. The bona fide potential for a significant number of other such programs in Southeast Asia continues.

Relying on lessons learned and models of successful clinic programs and networks, babsea cle is currently active in Thailand, Cambodia, Viet Nam, Laos, Malaysia, the Philippines, Indonesia and Singapore and has established working partnerships with a number of university, governmental and non-governmental as well as community-based organizations throughout Southeast Asia.

Babsea cle is actively working to encourage cooperation between these programs as well as among the larger legal community in Southeast
Asia. Operating in so many Southeast Asian countries at the same time is a challenge BABSEA CLE faces with its CLE initiative. However, while acknowledging the existence of this challenge, BABSEA CLE also sees it as a very logical and strategic step in simultaneously working with a variety of partners for a number of reasons.

Firstly, BABSEA CLE’s objective is to work with each of these partners to develop pilot CLE programs in each country and use these core CLE programs to then broaden the reach of CLE throughout Southeast Asia. As many of these partner universities are located in different, yet neighboring countries, this greatly assists in the outreach efforts. Each neighboring country has a different type of legal and educational system. Yet with all their differences, each country is ready and able to begin and support CLE programs.

Secondly, each of the CLE programs is somewhat similar in nature and the partners learn from each other, from the beginning, as their CLE programs are being developed. Most of the university partners eventually intend that their programs use a similar two-section clinic model, one focused on in-house legal consultation and referral services and the other section focused on providing community legal education. Due to this similarity in programs, there are many lessons that can be learned from each of the universities that will likely be strongly pertinent. In working closely with each partner, BABSEA CLE is able to apply and share working models and systems, lessons, curriculum, etc., from each of the programs while helping to avoid and not re-apply challenges and obstacles that have arisen in one or more other programs.

As mentioned in brief above, one way in which BABSEA CLE works to achieve the outcomes of social justice through practical education is by ardently promoting and assisting in the implementation of university-based community legal education clinic programs. Originally began at Georgetown University in Washington D.C. in 1972, CLE programs have been implemented throughout the years by universities around the world. They are also referred to by many schools as “Street Law” or “Practical Law” programs. These university courses teach students about law, human rights and civics and then teach them how to teach legal rights in the community, in a student-centered, participatory manner. The university students take both their substantive legal knowledge, as well as their acquired pedagogical skills, and transfer this knowledge and these skills to marginalized communities. Through this process, the students learn by doing, as they simultane-
ously teach and learn from the recipients of their lessons. This carries with it a strong reflective learning approach. We often find that the law students learn much more from their community students, simply by being exposed to individual and community problems and issues that are new to them.

The CLE programs utilize a wide variety of student-centered activities in their teaching methods. In part, these methods include role plays, simulations, mock trials, games, debates, small group discussions, opinion polls, field trips and street theater.

CLE programs focus on working with people in a practical way, to understand how they can access both the formal and non-formal justice systems, as well as effective, empowering methods to advocate for social justice and change. The CLE programs not only raise awareness of the law and rights of persons in a theoretical manner; the community teachings provide practical information on how to assert these rights and protections, as well as some of the effective mechanisms for doing so. Moreover, the programs encourage persons at grass-roots levels to reflect on their current and future legal, social and economic environments, and provide empowering ways to improve these arenas. All of this is accomplished with an aim of doing so in a practical and simple manner.

The communities which the students go to are exceedingly varied and wide ranged. They have included, in part, prisons, juvenile detention centers, community centers, domestic violence shelters, life skills teaching organizations and lower socio-economic secondary schools. The communities are located in both urban and rural areas of countries. In many of the countries we work in, the students often go to areas where there is little to no understanding of the law or of people’s rights.

At the same time, the students frequently involve themselves in non-law-related projects to immerse themselves in the communities and gain a better understanding of the hardships of others.

In university based CLE programs, the targeted communities vary, ranging from those of urban areas, rural areas, government staffs, community organizations, youth organizations, community leaders, correctional houses, religious organizations to secondary school students. Other programs focus a significant portion of their teachings on prison and juvenile justice settings, ethnic minority communities, single mother shelters and drug rehabilitation centers.
The determination of the targeted communities very much depends on demand from, and cooperation with, the communities themselves. For instance, beginning in December 2007 the CLE program at International Islamic University Indonesia, through a program called Legal Service Outreach: Community Empowerment to Achieve Equality of Rights and Improve Access to Justice, has focused the CLE Program in areas most devastated by the catastrophic earthquake of 2006.11

As can be expected, many challenges exist when introducing new, and often unheard of, methods of education in trying to get across CLE/social justice ideology. While faced with these challenges, BABSEA CLE acknowledges the incredible advancement and success in the expansion of CLE in Southeast Asia.

Some of these cooperative CLE successes have included:
- Jointly attended community legal education teachings by both professors and students alike from throughout Southeast Asia.
- Organizing more than two dozen thematic CLE regional workshops and conferences since 2005.
- Regional strategic program planning development sessions.
- Continuously working with experienced clinicians and senior students from partnered programs to assist other, more nascent CLE programs to develop.
- Quarterly student and professor CLE exchanges throughout the sub-region.
- Joint research and academic paper development by regional partners.
- Sharing of curriculum, lesson plans, CLE manuals and other resources, between CLE partners, both nationally and sub-regionally.
- Continued enrollment and participation in the BABSEA CLE Annual International Legal Studies Internship Program, which has been attended by students, professors, and other legal educators from countries throughout the sub-region and around the world.

Types of Support BABSEA CLE Provides to CLE Partners

While BABSEA CLE does provide a limited amount of financial support for some of its CLE partners, the mainstay of support is in the area of technical support centered on creating local sustainable programs. This has included:
• Assisting CLE partners in the development of activity planning, budgeting, proposal writing and other necessary program tasks.
• Assisting CLE partners with the development of administration procedures and policies and process for clinics.
• Assisting CLE partners with development of legal clinical curriculum, teaching modules and teaching syllabuses (including integration of professional ethics).
• Assisting CLE partners to develop a cadre of trainers, through training of trainers programs, to increase capacity in clinical education methodology and pedagogy.
• Facilitating visiting foreign clinic experts to share/exchange experiences with CLE partner programs.
• Co-organizing, with local CLE partner hosts, and delivering national and sub-regional workshops for CLE partners.
• Organizing study visits and exchanges for professors and students to other regional and international university legal clinics.
• Supporting the establishment of national, regional and international networks between clinics.
• Supporting the establishment of peer-to-peer mentor relationships between existing CLE partners and nascent CLE programs.
• Providing general organizational capacity development and training support to CLE partners.
• Supporting the development of linkages between university clinics and legal stakeholders (lawyers, prosecutors, provincial justice departments) and other organizations which may be providing legal assistance.
• Working with CLE partners to help increase the knowledge of communities of their legal rights and obligations and how to access justice through ongoing community programs delivered by law clinics, including the use of needs assessments, base line studies and post-training evaluation.
• Providing trainings to improve teaching skills and participatory methodologies being implemented by law clinic professors.
• Assisting CLE partners in developing and delivering community advocacy programs.
• Assisting CLE partners to develop fundraising strategies and grant proposals for funding.
• Assisting in supporting dialogues between CLE partners and government/state officials on policy and law reform issues relevant to the operation of law clinics.
Main Commitment Requirements for BABSEA CLE Partner Institutions

In helping universities to establish similar programs, BABSEA CLE has employed an ideology that the collaborative partnerships must be a two-way process. This has meant placing the following requirements on all of its partners:

- Programs must significantly focus on marginalized and vulnerable communities and individuals and must offer free support.
- Professors, students, lawyers and others involved in the programs should be strongly encouraged to become involved in a voluntary capacity.
- Partners must be open and willing to working collectively with other partners and be fully open to share knowledge, ideas and assist other CLE programs to germinate and develop.
- Partners must offer in-kind support in some form, usually in the form of offices or premises that are used for CLE as well as human resource supervision and administrative materials.
- Partners must have a concrete plan to infuse the CLE program into the core curriculum either as an elective or mandatory subject.

Malaysia and the Expansion of CLE

BABSEA CLE began CLE exploratory visits to Malaysia beginning in 2005. Various contacts with Malaysian universities, the Bar Council, ministry officials, NGO personnel and other key policy decision makers and implementers were achieved. These initial activities resulted in a number of successes early on, with a fervent and current contemporary expansion. Firstly, in 2006 BABSEA CLE helped to organize and facilitate the following three events:

1) The First Malaysian CLE Training of Trainers Workshop held at the Universiti Teknologi Mara (UiTM)
2) The First Malaysian Bar Council CLE Supervisor Training Workshop
3) The First Malaysian CLE Conference held at International Islamic University.

Following these key instrumental events, in 2006 the Universiti Teknologi Mara appointed BABSEA CLE Director Bruce A. Lasky to the position of Adjunct Professor to assist in the development of a non-simulated CLE program. This resulted in the formal registration of the currently operating Student Community Law Club (SCLC). The setting up of such a club in
the University helps to realize one of the missions of the university in regard to community service programs. The members of SCLC, comprised of students from the Faculty of Law, ranges from the first through fifth semester students. These students join the SCLC on a voluntary basis as one of their students’ activities of the Faculty. The objectives of SCLC are to provide legal knowledge and awareness to the communities. In adopting these methodologies the SCLC works with communities who often have a minimal knowledge of the law. These sessions therefore greatly benefit them.

In 2007, with the assistance of BABSEA CLE, members of both UiTM and the University of Malaya were taken on a study visit of CLE programs in the Philippines. As a result of this visit, and with positive partnership with BABSEA CLE, the University of Malaya began to develop what has now become a leading CLE program in Malaysia.

**Introducing CLE to Malaysian Universities: with particular reference to the University of Malaya**

Malaysian law schools strive to have a satisfactory number and selection of courses to cover the essential areas of the law. A common temptation of law schools is the constant search to ensure a sufficient variety of subjects to prepare their students for various vocations. While core subjects are important, one important principle that law schools have come to realize is the necessity of a broad view of legal education in its goal to produce good law graduates. Thus the focus of law schools for an undergraduate program, in addition to substantive law subjects, must be the development of intellectual abilities in understanding, critical thinking, reasoning, analysis and application, and also to inculcate values and social awareness. This is in line with the spirit of the *World Declaration of Higher Education* to educate responsible citizens who can contribute to society. Law students must be inculcated with values and must be made aware of their roles to ensure justice in society as preparation for their future careers, whether as a member of the judiciary, practicing member of the Bar, or as an officer to the government. To inculcate such values, it is a challenge to all law schools, particularly traditional law schools such as the Faculty of Law, University of Malaya, to realize that the focus of law schools now is not only to transmit knowledge, but to improve course materials and methodology to encourage students to evaluate an issue, test a hypothesis and to find solutions.
The Faculty of Law, University of Malaya is a professional law school producing graduates with academic and professional qualifications (LL.B Hons). Unlike in England, Malaysia has a fused profession. Established in 1972, the Faculty of Law, University of Malaya then was the pioneer law school in Malaysia. With the aim of producing local lawyers and legal officers, the curriculum emphasized mainly substantive law subjects (in both private and public law) as well as procedural law with greater emphasis on the law in Malaysia, such as the Malaysian Legal System and Islamic Law. Much of the curriculum followed the curriculum taught in English law schools, as Malaysia adopts the common law system. The structure has been generally maintained and is periodically reviewed to meet the challenging demands of the Malaysian legal profession and industrial needs.

Since its establishment in 1972, clinical education has always been in the faculty’s future plans. It was agreed when the faculty was first established that while teaching the letter of the law is an important function of the law school, it is not the only function. What is needed beyond the teaching of the law is a system of legal training devised to assist law students to acquire certain skills of thought, social as well as scientific thinking. Law students need to clarify their moral values, social goals, and to orient themselves toward the future. A law student needs to acquire the scientific knowledge and skills necessary to implement objectives within the context of contemporary trends. It is believed that with a good system in place, the law student will not only become a lawyer for the future but also be a social technician or a social engineer.

With this in mind, in 1998, the faculty proposed to set up a Legal Aid Clinic. The faculty realized the need of external assistance from the Bar Council in running the clinic. This is due to the fact that since the University of Malaya is a public university, an academic staff member as a government servant is not permitted to practice law (represent clients). There is also need for special training for academic staff in the management of clinics, and teaching skills. Due to a shortage of academic staff between 1999 and 2004, the introduction of the clinic was postponed.

It was not until 2005 that the idea of the proposed clinic resurfaced. Academics were sent to The First Southeast Asia Clinical Legal Education Conference at Pannasastra University in Cambodia in 2005, and made two trips to the Ateneo de Manila University, Philippines, first to attend the First Southeast Asia Clinical Legal Education Training of Trainers Workshop and
a separate, smaller Malaysian Clinical Legal Education study tour visit soon afterward in 2007. All programs aimed to familiarize participants with the innovative and interactive law teaching methodology used in Clinical Legal Education programs, as well as Street Law methods.26

In 2007, with three trained academics and four students, the clinical legal education program known as the Community Outreach Program (Cop) was introduced as a faculty activity. The program is purely a community-based teaching program. A community-based program was agreed rather than a Legal Aid Clinic for the practical reason that this program can be run solely by the faculty. About thirty students were recruited into the program when it first started in 2007. These students went through a three-day training workshop which not only trained them on the clinical legal education and street law methods but also to work as a team.

Setting up such programs requires great planning, dedication and team work. The faculty needs to set up partnerships with institutions for the teaching of the program, if the program is to run continuously in these institutions. Issues and needs of the institutions will have to be identified and agreed upon before community teaching starts. Cop started with a focus on juvenile delinquents and partnerships were set up between cop and juvenile institutions, such as the prison, approved schools27 and secondary and primary schools.28 Cop students were made to research statutory provisions and the law relating to crime and child rights before they started their program with these institutions.

In particular, they studied the Child Act 2001,29 the Penal Code,30 the United Nations Convention on the Rights of the Child and the Prison Act 1995.31 With this in mind, students were able to focus on their involvement with their clients to gain more understanding on issues involving juvenile justice and welfare. Although cop’s main focus is on teaching law, this does not mean that cop only teaches juveniles in institutions their rights, responsibilities and the criminal law. They also encourage their clients to continue their studies and pursue their ambitions. Cop students become good role models to these juveniles.32

One achievement that Cop is very proud of is its involvement in encouraging and assisting ten boys from the juvenile prison to pursue their studies in local universities. Cop has been involved with juveniles in prison since 2007. Students are exposed to life in prison and the kinds of offences committed by these juveniles—an experience not many law students can
acquire. In consequence, many COP students were encouraged to do their project paper on issues involving children, crime and the prison. In the prison, COP students work closely with all types of offenders, including those found guilty of murder. Juveniles found guilty of murder are imprisoned for an indefinite period until they are given clemency by the Yang di Pertuan Agong (King). In the case of these juveniles, COP not only exposes them to their rights in prison, but also helps them write letters requesting clemency to the King, assists lawyers in their appeals and in the preparation of their mitigations. This is such a valuable experience for students, who sit with each juvenile discussing and finding out information for their mitigation, which is then submitted to the respective lawyers.

One example is the assistance given to the appeal case of Mohd Haikal & Ors v PP. In this case, eight juveniles were convicted by the High Court of the murder of a fellow student in their school hostel in 2004. Their appeal to the Court of Appeal was rejected in 2009, and in the appeal to the Federal Court, the Federal Court overruled the decision of the Court of Appeal for the conviction of murder. The juveniles have since been released from prison (29 March 2010), and COP is now involved in assisting them in their rehabilitation and their university studies.

COP is also involved with schools, educating children on issues of crime, bullying and problems of children and the Internet. Currently, with the university’s involvement in internationalization, i.e. accepting exchange students from institutions with a Memorandum of Understanding, COP has taken part in training exchange students whether in their country, or in the University of Malaya. Currently, COP, with the assistance of Babsea CLE, is training students from the Law Faculty, Prince of Songkla University, Thailand, and Faculty of Law, University of Pancasila, Indonesia. It is hoped that when students from the University of Malaya start their exchange program to these two universities, their COP/CLE programs will be underway, and Malaya students can join them in CLE activities in those countries.

With the success of COP, in 2008, the faculty introduced CLE as an accredited optional course for 2nd and 3rd year students. In introducing the course, a number of factors had to be taken into consideration. Firstly, as part of a faculty course, CLE has to be structured to comply with the LL.B program objectives. When the faculty was first introduced, it was autonomous and enjoyed the privilege of having its own law programs and curriculum, but since 2008, all programs must comply with the Malaysia Qualifying
Framework (MQF) set out by the Malaysian Qualifying Agency (MQA) which accredits university programs in Malaysia. Programs in universities must also comply with the Ministry of Higher Education guidelines which underline government policies. With this in mind, CLE was introduced with the main objective to develop better-trained and more socially conscious lawyers. This is in line with three of the faculty’s program objectives38 namely: (i) to demonstrate social skills and responsibility towards society and the legal program; (ii) to communicate in both local and English language as well as lead and work as a team; and (iii) to solve legal problems by applying relevant laws critically. Secondly, while an optional paper is usually taught by one member of academic staff, for the CLE course, at least three academic staff are needed to teach and assess students. For a faculty with limited academic staff39, a number of compromises needed to be made to convince the administration of the need for the course.

Academic staff taking charge of the CLE course need to put in extra hours of teaching and assessment on top of their normal teaching hours. Due to the shortage of academic staff, there is a need for new appointments. To be appointed as a member of academic staff of the university, a person must acquire a Ph.D40 or a Masters degree equivalent to a Ph.D. Due to the strict criteria for appointment, the faculty had to outsource and appoint part-timers and visiting academics. This is where BAPSEA CLE was able to assist by sending part-time lecturers and visiting academics.

The CLE is a three-credit course and is based on a continuous assessment. The course is purely community based. Part of the course concentrates on the development of lesson plans, knowledge and skill. Students are assessed on their; (i) teaching performance, which includes teaching methodology, legal research and lesson content, lesson plan and creativity; (ii) clinical participation, which includes in-class participation, demonstration teaching and individual supervision; (iii) administration responsibility and their reflective journals. The course has a limit of fifteen students. The course has run for two years since it was introduced, and although appointments of new academic staff are very slow, on the positive side, graduates of the faculty have come back to assist in the program this year. The program has also welcomed juveniles who were once clients, now released from prison and members and facilitators of COP University of Malaya.
**Conclusion**

Despite the many challenges it faces, CLE continues to move forward in Southeast Asia and Malaysia and is gaining greater acceptance. The current developmental approach is a slow and sustained engagement between national and regional partners to develop networks of programs that can learn from both each other’s successes and set-backs. All of the Southeast Asian clinical programs require further support—not simply financial, but, more significantly, technical and institutional—if they are to mature into fully accredited programs that are valued by university faculty, students, and community members alike.

As clinical education progresses in Southeast Asia, the clinical movement will undoubtedly look to other countries’ experiences for lessons and examples. Other nations, especially those from civil code countries can all provide the Southeast Asian clinical movement with examples of how best to proceed with developing such an important part of formal legal education.

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**Endnotes**

1 BABSEA CLE uses the broad term Community Legal Education (CLE) when referring to its overall program, which includes working with grassroots communities as well as universities. BABSEA CLE uses the term Clinical Legal Education when referring only to university-based programs.

2 For example, at Pannasastra University of Cambodia, the CLE program was set up in 2003 as an interdisciplinary accredited course program where students from all streams and faculties are permitted to enroll in the CLE Community Teaching Program.

3 In June 2010, BABSEA CLE and its local Vietnamese partner, the Institute on Policy, Law and Development Vietnam (PLD-Vietnam), were engaged by the UNDP to spearhead an applied CLE research project throughout Viet Nam, whereby they will be working with universities throughout the country to develop and/or strengthen CLE programs by, in part: 1) Assessing the value of different forms of support to clinical legal education programs in Viet Nam; 2) Demonstrating how CLE programs contribute to the enhancement of legal education in Viet Nam through improving the educational and lawyering skills value of students enrolled in law faculties; 3) Providing evidence-based and objective recommendations to assist the Government of Viet Nam, university law faculties, UNDP and other development partners to formulate broader and longer-term programs of support.

4 Street Law is a registered trademark of Street Law Inc a non-profit organization based in the United States (www.streetlaw.org). Both the Georgetown University
Street Law Clinic and Street Law Inc., provided significant technical support, advice and materials, in the process of developing these community legal education clinic programs.


6 Nandang Sutrisno, *Community Legal Education (Street Law) Program at the Faculty of Law Islamic University of Indonesia* (7-13 December 2008) (paper presented at the Global Alliance for Justice Education Conference, Manila, Philippines).

7 Chiang Mai University, Thailand, University Malaya, Malaysia, and Pannasastra University of Cambodia.

8 Chiang Mai University and National University of Laos Faculty of Law and Political Science.

9 Universiti Teknologi Mara (UiTM), Malaysia.

10 National University of Laos Faculty of Law and Political Science, Lao PDR.

11 These have included Kecamatan (Sub-regency) Imogiri, Kabupaten (Regency) Bantul, and Propinsi Daerah Istimewa (Special Province) Yogyakarta.

12 Prior to this time, the UiTM Faculty of Law operated, and continues to operate, a simulated CLE program which is introduced in the final year for students of the LL.B (Hons) Program. It is a simulation program in which students are required to work in a mock legal firm or clinic, where they are taught the necessary lawyering skills.


16 Ibid., note xvi, page 13.

17 A four-year course (eight semesters) combining the academic and certain professional aspects of law. The LL.B degree is recognized as initial qualification for admission to the legal profession. See Ahmed Ibrahim, “The Law Teacher in Malaysia” (1976) JMCL 252.

18 An LL.B graduate from the University of Malaya will only need to go through a nine-month pupilage (reading in chambers) period with a legal firm before she/he is called to the Malaysian Bar as an advocate and solicitor.

19 Such as Contract Law, Tort, Constitutional Law Criminal Law, Land Law, Equity and Trust, Law of Association and Jurisprudence. All these courses are still part of the Faculty curriculum.

20 Such as Evidence, Civil and Criminal Procedures.

21 Malaysia was a British colony until it gained independence in 1957.

22 Ibid., note xvi.


24 An advocate and solicitor must have a license to practice. A government servant is not permitted to be in any other employment.
25 The Law Faculty employs about thirty-eight academic staff with a hundred undergraduate intake a year. This makes the faculty one of the smallest faculties in the university. Between 1999 and 2004, a number of academic staff were sent for further studies.


27 Institutions under the Social Welfare Department Malaysia for juvenile delinquents and those identified as “in moral danger”.

28 The coordinator of CLE/COP specializes in Juvenile Justice and Welfare and Criminal Law. She is also a consultant with the Social Welfare Services Malaysia, and works closely with the juvenile prison.

29 Act 611, the law relating to children (those under the age of eighteen years).

30 Act 574, the law relating to criminal offences.

31 Act 537, the law relating to prison and prisoners.

32 In Malaysia, ‘Juvenile’ includes a child. Child is defined as someone under the age of 18 years, and in criminal proceedings, over ten and under eighteen years old. See s.2 Child Act 2001 (Act 611). Juveniles in prison are between 14 and 22 years old. In approved schools, they are under eighteen.

33 A compulsory short thesis for 3rd year students.

34 Section 302 Penal Code (Act 574) provides a mandatory death penalty for the offence of murder. But section 97 Child Act 2001 (Act 611) provides that a child cannot be sentenced to death, in lieu, they are sent to prison ‘at the pleasure of the ruler’.


37 See International students, www.edu.um.my

38 The Faculty of Law has eight program objectives. See www.um.edu.my

39 The Law Faculty has an intake of one hundred undergraduates for one academic year with about thirty active academic staff. Intake for post graduates is unlimited.

40 See recruitment, www.um.edu.my


42 Ibid., note xxxiv.
Bangladesh NHRC: Baseline Survey Paves Way for Human Rights Education

National Human Rights Commission, Bangladesh

The appointment of three Commissioners on 1 December 2008 completed the establishment of the National Human Rights Commission of Bangladesh (NHRC). But with a new law enacted in June 2009, the National Human Rights Commission Act, and upon retirement of the then Chairperson, the NHRC was reconstituted on 23 June 2010. In addition to a new Chairperson, the newly-constituted NHRC comprises of one full-time member and five honorary members.

In accordance with its official mandate, the NHRC serves as the major national human rights watchdog: monitoring implementation of state obligations to respect, protect and fulfil the rights of every single member of society, addressing specific human rights complaints through investigation, mediation and conciliation, and where necessary, through constitutional litigation, and more broadly through raising public awareness.

In May 2010, the Government of Bangladesh entered into a five-year agreement with the United Nations Development Programme (UNDP) launching the National Human Rights Commission Capacity Development Project (NHRC-CDP). The project aimed to build the NHRC as an effective and sustainable institution. The project has four objectives focusing on the following concerns:

1. Institutional development
2. Monitoring and investigation of human rights situation
3. Awareness raising about human rights

With the support of this and other projects, the NHRC anticipates to have the capacity to provide human rights education and training towards making a culture of human rights take root in the country. The project aims to equip NHRC with the necessary tools to implement its human rights
awareness program and to focus on issues of concern. In this connection, a communication and information dissemination strategy is being prepared under the project.

**NHRC Strategic Plan and Key Themes**

To begin with, NHRC took the initiative to develop a strategic plan for its future journey. Through a broad consultative process, the NHRC has developed and is implementing its first Strategic Plan, which has identified four focal areas including human rights awareness. The provision on Human Rights Promotion, Education and Awareness-raising of the Strategic Plan reads as follows:

National institutions need effective human rights information, education and communication strategies, including extensive human rights awareness-raising programmes. This recognises that unless NHRI [national human rights institutions] constituents are aware of and understand their rights, they will be unable to access them. That being said, the NHRC is aware that there have been a range of human rights awareness-raising programmes initiatives in various parts of the country over a considerable period of time. Whatever the Commission does in this area should complement and build on these initiatives and the Commission is committed to working with NGOs [non-governmental organizations] to spread the NHRC’s message countrywide.

As a starting point, the Commission proposes to undertake a detailed baseline study to determine public attitudes and awareness of human rights as well as awareness of the Commission’s existence and role. The Commission will also learn about and review recent awareness-raising initiatives to better coordinate future information and education strategies.

These activities will provide critical baseline data which will support the development of appropriate and targeted community education campaigns by the Commission. It is intended that the baseline study be repeated at appropriate times to enable the Commission to monitor and evaluate the effectiveness of its programmes. The capacity development project coordinated by UNDP will support these activities, including assisting with the design and implementation of a comprehensive public education and information strategy based on the results of the study.
If the Commission is to meet its long-term goal of a just society where violence by state is an episode of the past and officials know, and are held accountable for, their responsibilities, extensive training programmes and policy initiatives are required. Just as the Commission does not have the capacity by itself to develop a human rights culture throughout the country, so it will need considerable assistance from partners to make officials aware of their responsibilities and ensure that they comply with them. The Commission intends to work with all relevant training institutions and departments in the official sector to train their trainers to mainstream human rights into their own training programmes.

In time, the NHRC intends to undertake regular national inquiries into specific human rights issues. While the intense nature of national enquiries and the extensive resources they will require means the first inquiry will need to wait until the Commission is at full capacity, it is a medium term strategy to take advantage of the profile and effectiveness that such initiatives can generate.

The NHRC undertook a detailed baseline study as provided for under the Strategic Plan to determine public attitudes and awareness of human rights as well as public awareness of its existence and role. The study involved both quantitative and qualitative methods, with the quantitative aspects involving a household survey covering the entire country.

**Objectives of the Baseline Survey**

The objectives for the baseline survey were:

- To assist the NHRC in developing appropriate public education and awareness human rights messages and methods targeting the most important human rights issues facing Bangladeshis by:
  - Determining the levels of understanding and awareness of human rights among Bangladeshis generally.
  - Determining the major types of human rights issues facing Bangladeshis generally, but with a primary focus on the human rights issues prioritized by the NHRC.

- To assess the level of awareness and understanding of the NHRC, its mandate, and its roles and functions.

- To determine where people go when seeking redress for human rights violations, why they choose this option rather than other op-
tions available to them, and to assess their level of satisfaction in the services provided.

- To assess the strengths and weaknesses of the legal and policy framework for the protection of human rights in Bangladesh, including the level of commitment to and domestication of key international human rights instruments.

- To determine and suggest how stakeholders and role players in human rights protection and promotion will support the NHRC to improve the human rights situation in Bangladesh by giving special emphasis on the selected priority thematic areas.

- To determine a baseline/benchmark against which to measure the success of future public education and awareness campaigns (and NHRC’s other interventions).

The Survey Team, comprised of renowned national and international consultants, undertook the study from late June to mid July 2011. The survey report was disseminated on 1 November 2011.

Baseline Survey Results

In the survey report, entitled “Perceptions, Attitudes and Understanding” the Survey Team notes that

[I]t is important to stress at the outset though that the study, and this report, deals primarily with perceptions, attitudes and understanding. While it includes references to previous research and identifies major problems under each theme, it does not and cannot analyse each and every issue in detail. Many of the issues considered in the baseline appear ripe for further and more detailed study and analysis and these have been mentioned where appropriate.

The following are the highlights of the baseline survey results.

General understanding of human rights

Major problems identified

Respondents were asked to identify the major problems facing Bangladesh. Since almost any problem facing a society has a human rights-
related dimension, this question was deliberately kept vague, requiring respondents to focus on problems and issues without using the term ‘human rights,’ with which some people might not have been familiar. Of the problems mentioned, the following emerged as the most pressing:

Table 1 – Major problems identified

<table>
<thead>
<tr>
<th>Problem</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price hike of essential goods</td>
<td>80.9%</td>
</tr>
<tr>
<td>Electricity/gas/water problem</td>
<td>51.6 %</td>
</tr>
<tr>
<td>Communications and roads problem</td>
<td>44.7 %</td>
</tr>
<tr>
<td>Unemployment</td>
<td>30.6 %</td>
</tr>
<tr>
<td>Education</td>
<td>24.5 %</td>
</tr>
<tr>
<td>Lack of income and employment opportunities</td>
<td>23.6 %</td>
</tr>
<tr>
<td>Population</td>
<td>23.3 %</td>
</tr>
<tr>
<td>Lack of health care facilities</td>
<td>18.8 %</td>
</tr>
<tr>
<td>Non-availability of agricultural inputs</td>
<td>15.3 %</td>
</tr>
<tr>
<td>Corruption</td>
<td>15.3 %</td>
</tr>
</tbody>
</table>

Note: The survey respondents were asked to prioritize the problems and pick multiple answers. The response percentage for each answer is computed in relation to the total number of respondents and thus the percentages do not add up to a hundred percentage. This applies to all other presentations of statistical results of the survey in this article.

Understandably for a poor country like Bangladesh, the major issues facing people in their daily lives relate to poverty and lack of access to and protection of socio-economic rights. Other than socio-economic issues, the following problems facing the country were raised:

- Political instability (10.1%)
- Hartal (general strikes) (7.8%).
- The situation regarding law and order (7.5%).

It is clear then that access to socio-economic rights is an area on which the NHRC should focus. But poverty impacts on all aspects of life and poorer people struggle to demand their civil and political rights and to protect themselves from government abuse of power. Given that the question was framed broadly to include any type of problem facing the country from the respondent’s personal perspective, and given levels of poverty, it is to be anticipated that civil and political rights issues identified by the NHRC
during the consultative process to develop their Strategic Plan would score lower than the issues related to poverty that people face on a daily basis. Nonetheless, civil and political rights-related issues identified in the survey are similar to those prioritized by the NHRC in its Strategic Plan—for example:

- Lack of access to justice (4.1%)
- Harassment by law enforcement agencies (2.2%)
- Extrajudicial killing (1.2%).

What are human rights and which should be protected?

Half of the respondents (50.2%) had not heard the term ‘human rights’ at all, which indicates the need for at least some basic awareness-raising regarding the term and what it means in all public awareness messages. Differences were fairly pronounced when the data are disaggregated:

- Those in urban areas (62.5%) were far more familiar with the term ‘human rights’ than those in rural areas (43.6%).
- More men (57.1%) have heard the term than women (42.5%).
The higher the level of education, the more likely that someone will have heard the term—88.2% of educated people have heard it compared to 23.8% of non-literate respondents.

The least poor (74.3%) are also far more familiar with the term than the poorest (39.8%).

When asked to identify what the term ‘human rights’ means, the following were the most common responses:

- The rights we all have (43.7%)
- Basic rights (28.4%)
- Freedom of movement (17.4%)
- Right to express opinions freely (11.1%)
- Personal freedom (10.1%)
- Rights we have from birth (7.5%)
- Right to education (6.1%)
- Protects our basic liberty and freedoms (5.9%)
- Right to vote in elections freely (6.1%).

This indicates a fairly good understanding of what the term means among those familiar with it and can be compared with responses to the question what people have to do to earn their rights. When responding to
this, many people understood that privilege and influence (‘be rich,’ ‘good relationship with the administration’) play no role (at least in theory). Instead, knowledge of rights is regarded as the most effective way of claiming one’s rights.

Table 2: What do you have to do to earn your rights?

<table>
<thead>
<tr>
<th>Rank</th>
<th>What do you have to do to earn your rights?</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>N</td>
<td></td>
<td>1,809</td>
</tr>
<tr>
<td>1</td>
<td>Be aware</td>
<td>50.0</td>
</tr>
<tr>
<td>2</td>
<td>People to be made aware</td>
<td>33.8</td>
</tr>
<tr>
<td>3</td>
<td>Be educated</td>
<td>26.5</td>
</tr>
<tr>
<td>4</td>
<td>Don’t know</td>
<td>16.0</td>
</tr>
<tr>
<td>5</td>
<td>Not to tolerate any illegal activity</td>
<td>15.3</td>
</tr>
</tbody>
</table>

When asked what human rights people should have, people recognized the right to life as the primary human right as well as key civil and political rights such as equality and freedom from discrimination, personal freedoms and freedom of expression. Understandably in a country with high level of poverty, there was also a strong focus on socio-economic rights and access to services:

Table 3: The rights citizens should have

<table>
<thead>
<tr>
<th>Rank</th>
<th>Rights</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>N</td>
<td></td>
<td>3,632</td>
</tr>
<tr>
<td>1</td>
<td>Right to life</td>
<td>50.6</td>
</tr>
<tr>
<td>2</td>
<td>Right to education</td>
<td>46.4</td>
</tr>
<tr>
<td>3</td>
<td>Rights to have food</td>
<td>40.2</td>
</tr>
<tr>
<td>4</td>
<td>Right to health</td>
<td>31.8</td>
</tr>
<tr>
<td>5</td>
<td>Rights to have shelter</td>
<td>30.8</td>
</tr>
<tr>
<td>6</td>
<td>Right to clothing</td>
<td>17.0</td>
</tr>
<tr>
<td>7</td>
<td>Freedom of expression/opinion</td>
<td>15.3</td>
</tr>
<tr>
<td>8</td>
<td>Personal freedom (to do anything that I want to do)</td>
<td>13.1</td>
</tr>
<tr>
<td>9</td>
<td>Equal treatment/equality</td>
<td>11.5</td>
</tr>
<tr>
<td>10</td>
<td>To protect myself and my property</td>
<td>8.7</td>
</tr>
</tbody>
</table>
3. Protecting human rights and the Constitution

When asked how human rights are protected in the country, many respondents (30.8%) either did not understand the question or simply did not know that human rights (or at least some of them) are legally protected and enforceable in Bangladesh. 19.5% answered that they are 'not protected,' but it is not clear whether this meant that they were unaware of the legal protections or whether they meant that they are not protected in practice.

Of those who believed rights are protected, the most common answers for how they are protected were:
- By the law (34.7%)
- By the administration (6.8%)
- By the Constitution (6.1%)
- By social norms and values (4.6%)

The low level of understanding that the Constitution protects human rights was mirrored in the answers to the question ‘what is the Constitution’:
- 58.4% of respondents had not heard of the Constitution, with those in the urban, least poor and higher education categories apparently more aware of it than those in lower income and rural groups.
- Men (57.2%) are more (p<.000) likely to have heard of the Constitution than women (26%).
- The educated (89%) appear considerably more familiar (p<.000) with the term than non-literate (14.3%).

When asked to describe in more detail what the Constitution is, those who knew of it understood the basic idea:
- The law that regulates the state and how it is governed (22.9%)
- It is a law (21.4%)
- A law for ruling the country (15.9%)
- Highest law (12.4%)
- Parliamentary law (12.0%)
- Supreme law (9.0%)
- Basic law (6.8%)

Rights and obligations

The survey included two questions to test people’s understanding of the link between human rights and the attendant responsibility to respect the
law and the rights of others. When asked ‘if you have the right to life, what duties or obligations do you have regarding other people,’ the top five responses were:

- Abide by the law (40%)
- Make yourself and others become aware (22.5%)
- Protest injustice (21.4%)
- Protect other people (14.8%)
- Be aware of specific rights (10.9%)

Similar responses were received from respondents when asked to consider what obligations arise if you want to claim protection of the law:

- Not break the law (43.1%)
- Be aware of the law (20.3%)
- Respect the rule of law (15.1%)
- Cooperate with government (10.3%)
- ‘Protest when someone breaks the law’ (4.1%) and ‘cooperate with law enforcement agencies’ (4.2%)

These responses generally indicate an awareness that rights and obligations are interlinked—especially the obligation to know and abide by the law. However, a large number of respondents answered ‘don’t know’ to these questions (23.3% and 32.1% respectively), indicating a need for public awareness campaigns to include messages that human rights create obligations as well.

Methods – education and awareness

People are only able to claim and protect their rights when they know what human rights are, that they are (mainly) legally enforceable, and when they are aware of what institutions, including the NHRC, exist to assist them when their rights are violated or ignored. There are a multitude of methods for conducting public education, awareness and information campaigns alone or in partnership with others.

a. Joint campaigns

Most national human rights institutions (NHRIs), including the NHRC of Bangladesh, have limited human resources and other capacities to deal with their wide mandates. At the same time, NHRIs’ public education and awareness campaigns almost invariably focus on areas that civil society or-
ganizations, international non-governmental organizations (NGOs), United Nations (UN) agencies and others have already prioritized. These organiza-
tions and agencies have laid much of the groundwork around awareness and
education on human rights issues and provide excellent starting points for
an NHRI, but there is also the potential of overlaps, duplication of effort and
wasted resources as a result.

Recommendations

- It will be important for the NHRC to liaise with NGOs and UN agen-
ties prior to entering into any awareness and education campaign
to see what these are doing or planning, what messages and meth-
ods will be used, and whether these are in line with its own strategy.
Where they are, the NHRC has two options:
  – To leave the awareness and education to others to conduct
    and then to focus on areas where gaps exist; or
  – To consider a joint campaign bringing its own resources
    and outreach to the table to increase the effectiveness and
    impact of any such campaign.

b. Will targeted campaigns be required?

Although differences are found when the data from the baseline sur-
vey are disaggregated, these are not profound enough in most cases to sug-
gest that specific campaigns are required to reach specific targets and that
campaigns aimed at the general population will be as effective as campaigns
aimed at specific individuals. Exceptions to the rule are campaigns aimed
at the rights of Adibashis\(^1\) that should focus primarily on the areas where
Adibashis are most commonly found.

Recommendation

Except for campaigns on the rights of Adibashis specifically targeting
communities where Adibashis are commonly found, public awareness and
education campaigns should target the entire country.

c. Human rights in formal education

Responses in the household survey indicate that people across the spec-
trum benefitted from human rights education messages at school, which
suggests that including human rights education in the formal curriculum
should be prioritized. In this regard, and for primary school education in particular, UNESCO provides useful materials for early learners that NHRC might find useful to consult.

Other campaigns could also target schools on a broad range of issues. Such campaigns could include events at schools and essay, art, debating and other competitions and workshops aimed at raising awareness of gender equality, other cultural, religious, ethnic and linguistic groups, and issues of disability.

In this regard, it should be noted that Bangladesh is a party to the International Covenant on Economic, Social and Cultural Rights, Article 13 of which calls for state parties to:

Agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.

**Recommendations**

- NHRC should lobby for human rights education to be included in the formal education curriculum as a distinct subject at different levels.
- Once this has been achieved, the NHRC can assist in the development of the curriculum and in learning material development, and can assist in training of educators using the training of trainers approach.
- In the interim, the NHRC might consider:
  - A separate activity to scope all existing textbooks for discriminatory, abusive, sexist and other comments and issues
  - Campaigns (such as art and essay writing competitions) targeting school-goers as a way of raising awareness and understanding of human rights.

**d. Television and radio**

Television and radio were identified in the study as the main sources of information and knowledge on human rights. Both have the potential to reach wide target audiences and benefit from being able to convey messages to everyone, including the non-literate, poor and rural dwellers who are less likely to be reached using printed materials than richer, wealthier and better educated people in Bangladesh.
Radio and television adverts can be expensive, but there are ways of keeping these costs down and there are other ways of using the media—such as by encouraging radio and television stations to hold discussions, interviews and call-in shows using Commissioners and senior staff of the NHRC and other human rights experts identified by the NHRC. These ideas are expanded upon in Annex A.

**Recommendation**

- Radio and television should be prioritized, or at minimum considered, when designing education and awareness campaigns.

**e. Publications**

Publications such as booklets and pamphlets are commonly used and very effective methods for awareness and education. Their main drawbacks are the cost involved and that they are only of value to literate members of society. On the other hand, they are long lasting, capable of reaching large numbers of people and provide options for education, information and awareness. The most commonly used are:

- Booklets (best used for education campaigns)
- Pamphlets (most appropriate for information and awareness only—both on human rights issues and for information and awareness of the roles and functions of the NHRC)
- Comics (used mainly for specific age groups that read these)
- Posters (mainly used for information only since text should be kept to a minimum. They can also be used effectively to raise awareness of the rights protected by the Constitution by listing the rights in Part III and by providing very simple definitions of what these rights mean)
- Newspaper inserts on various human rights issues that can also be used as posters in schools
- Newsletters (including electronic newsletters), which can be used to keep people informed of the work of the NHRC
- Postcards
- Billboards (which are really just large posters and are mainly used for information and awareness rather than for education).
- Stickers
- Adverts on buses and rickshaws
• Use of popular art, cinema poster style graphics and rickshaw paintings.

Ideally, publications should be translated into various languages. Tips and ideas for developing publications, and for keeping the cost of translations to a minimum, are included in Annex A.

Recommendation
It is recommended that the NHRC consider a broad range of publications targeting specific human rights issues, and at minimum a plain language pamphlet on the role and functions of the NHRC. Ideas for what publications might work best are included in the recommendations that follow.

f. Workshops, street theater and community meetings
The high levels of people reached through neighbors and public discussions indicate that some forms of community meetings, workshops, courtyard meetings, street and popular theater, and even (and possibly e-learning programs and television programs using Skype communications) should be considered. Of course, all of these methods are fairly labor intensive and only reach comparatively small numbers of people at a time, but the reach of workshops in particular can be increased by encouraging NGOs and others to use workshops developed by the NHRC and also to include awareness and information on the NHRC and its roles and functions in workshops they already run.

Tips and ideas for designing and conducting workshops and dramas are included in Annex A.

Recommendation
The NHRC should consider developing a general workshop (including a manual for trainers) on human rights and its role and functions. Ideas for other workshops that might prove useful are included in the recommendations that follow.

g. Low cost and no cost methods
Lessons learned from child rights organizations in Brazil and the South African Human Rights Commission show that there is potential for low and no cost activities to be run, such as encouraging those who package goods
that poor people most often use, like candles and matches, to carry human rights messages on the packaging.

A variety of low cost and no cost ideas are included in Annex A.

**Other methods**

While education and awareness-raising campaigns are powerful tools in bringing about greater respect for and protection of human rights, they are not the only weapons in the NHRI arsenal. NHRI{s} occupy a unique position in any country—one that many have failed to grasp. Perhaps because members and staff often have a civil society background, there is a tendency for some NHRI{s} to operate in very similar ways to NGOs. Most NHRI{s}, including the Bangladesh NHRC, have various roles and broad mandates including public education and awareness, receiving and investigating complaints, monitoring government compliance with human rights norms and standards (including those in the Constitution and international and regional instruments) and advocacy and lobbying.

Although the survey team was not required to consider other methods, education and awareness are not always the most appropriate methods to use when seeking to address particular human rights violations and problems. As a result, the following should also be considered by the NHRC.

*a. Advocacy and lobbying*

Given their status, NHRI{s} are uniquely positioned to lobby governments to adopt or amend legislation to bring it in line with human rights norms and standards, to submit reports to UN agencies and bodies, and to advocate for an end to systemic and systematic human rights abuses. Many of the issues that have been raised during the baseline survey are issues that are best dealt with via advocacy and lobbying instead of, or together with, a public education and awareness campaign.

In addition to lobbying for human rights to be included in the formal education curriculum, other areas arising from the survey where NHRC might lobby and advocate are included in the appropriate sections below.

*b. Training*

As suggested by many of those consulted as part of the qualitative survey and indicated in research, there is clearly a need for human rights training to be provided to those who, because of the nature of their functions, are
traditionally seen as the most likely to violate human rights in any society in the world—the police (including Rapid Action Battalion [rab]), military and prisons. But there are others too who would benefit from such training, including officials responsible for migrant workers, health service providers, teachers, and officials in all of the government departments and bodies providing socio-economic services. Of course, there is no way the NHRC could conduct all of the training that would need to be provided and it is suggested that this is not really their role. Instead, the role of the NHRC should really to make sure that such training happens and that it is in line with the Constitution and international human rights standards. The NHRC should in particular be wary of providing training directly to rab given current debates and controversy in this area.

Recommendations for where lobbying for and assisting in training might be appropriate are included in the sections below.

c. Investigations

Predictably for a national survey and the recent establishment of the NHRC, virtually none of those in the household survey have yet reported a matter to it—99.7%. But this will change as knowledge and awareness increase. Since many NHRI’s become overwhelmed by complaints, the NHRC too will need to consider how to deal with these without being swamped.

NHRI’s are generally involved in three broad types of investigations:

- Individual complaints (or complaints from small, easily identifiable groups). These are usually reported to the NHRI by the individuals or groups concerned, but they may also be identified from reports of other organizations and in media reports.
- Major Events – such as riots following elections or in response to killings by the police and others.
- Systemic violations (such as discrimination against women, Adibashis and people with disabilities, and child labor).

The options available to an NHRI when dealing with human rights violations depend on the powers in its founding legislation but could include:

- Referring the matter to another or better placed national or international institution, or to a relevant civil society organization.
- Mediation and negotiation.
• Reporting the matter to the police for investigation and prosecution (either after the violation has been fully investigated or, where the police can be trusted to investigate properly, once it becomes clear that a crime or crimes have been committed).
• Bringing a civil action (either for civil damages or to prevent the harm from continuing or arising again).
• Holding an inquiry (usually following a major event or into systemic violations).
• Making recommendations on addressing the issue.
• Lobbying and advocating for new laws or amendments to laws.

Many systemic violations of rights can be addressed through education and awareness. Researchers, investigations staff, senior managers and Commissioners all have a role to play in this regard. It is important to keep and analyze records of complaints received, media reports and reports of other role players to spot when problems are systemic and where education and awareness might be more effective than dealing with each complaint individually. For example, if there is a steady increase in complaints around child labor, then it is an indication that the problem is systemic. While the NHRC may decide to deal with each complaint separately, it may make better sense to deal with one or two as test cases, coupled with an education and awareness campaign that talks not only about the law and harmful effects of child labor, but that also includes information on what happened in the test cases to warn employers of the consequences they too might face. The NHRC should also consider engaging or intervening in existing cases by undertaking broader investigations that courts cannot do, or to monitor the implementation of judgments.

Lastly, it was suggested by many people consulted during the survey that, in addition to collaborating with NGOs on public awareness and education campaigns, NGOs can also receive and refer complaints to the NHRC, giving it instant and great outreach in the absence of offices outside of Dhaka. This approach has been followed effectively by NHRCs in places like Malawi, but a word of caution is required: using NGOs and others to receive and refer complaints to NHRCs increases their outreach at minimal cost, but it also has the potential to put enormous strain on their capacity to deal with the increased number of complaints. And failure to adequately deal with all
complaints received can lead to frustrated expectations and seriously damage the reputation of the NHRI concerned.

**Conclusion**

The NHRC of Bangladesh is very keen to conduct comprehensive human rights education program involving different stakeholders. NHRC strongly believes that, with its various activities, it will be able to see remarkable changes in the perception and attitude of the people of Bangladesh in the coming days.

This article is an extract of the summary report written by Elizabeth Wood based on the detailed report prepared by Data Management Aid and Bangladesh Legal Aid and Services Trust.

**Endnote**

1. ‘Adibashi’ is an indigenous word that indigenous people in Bangladesh use to define themselves. The baseline survey report takes note of the Government’s position declared in August 2011 that there are no indigenous people in Bangladesh. However, since the survey was conducted prior to this government declaration, the term ‘Adibashi’ has been kept in the survey report to accurately present the questions asked and the answers obtained.
Annex A

Tips and Ideas for Education and Awareness Campaigns

INTRODUCTION

The following tips and ideas are extracted from a draft training program written for the Adilisha project by Greg Moran. Adilisha is a project of Fahamu, an Oxford University-based non-governmental organization (NGO), targeting NGOs in Africa.¹

Although the materials were written for African NGOs and are in very plain language, they are provided in the hope that some of the ideas, practical tips and case studies will be useful to the NHRC when deciding what materials and methods to use for conducting public education and awareness campaigns.

PUBLICATIONS

a. Booklets

Booklets are a popular method of providing non-formal education. Since you have a fair amount of space, you can cover a topic in some detail.

However, booklets need to be read. If your target market is illiterate or semi-literate, you may well be wasting time and money producing huge numbers of booklets.

Many NGOs have already produced booklets on general human rights topics such as ‘what are human rights’ or your local bill of rights. Before deciding to produce a similar booklet, look around and see whether you cannot get free copies from other NGOs or whether you cannot help them to produce copies for you by:

- Buying them;
- Paying for re-prints; or
- Paying for the booklet to be translated into languages that suit your needs.

Of course, you must read their booklets before deciding to do this to make sure they are correct and that they are suitable for your target market.

You may even find that another NGO has produced a booklet on a specific topic you want to cover and that this is suitable for your target market. For example, there are many publications around on HIV/AIDS. Rather than producing a new one, see if you cannot use one already produced by another NGO.

Booklets can be used:

- By schools;
• By other NGOs;
• When conducting workshops (as support material);
• To educate the public generally.

Tips:
• Booklets should be in plain language and kept as simple as possible;
• If you have the money, translate them into local languages. Or, use staff members who speak these languages to do this for you for free. Note though that each time you produce a new language version of a publication, you need to print it and the costs of this are the same as if it were a completely new publication.
• Include pictures, diagrams and other images to explain what you mean. Try not to rely too heavily on text.
• A5 booklets seem to work best. Also, keep the number of pages down to around sixteen inside pages. If a booklet is too big or too thick, some semi-literate people will be scared off.
• Make the cover as attractive as possible. You want to make sure that someone will pick the booklet up and read it, even if there are other publications lying next to it.
• Limit the booklet to one topic only, even if the topic is human rights generally. For example, do not put out a booklet dealing with child rights, the rights of people with HIV/AIDS and the rights of refugees. Rather produce a series of booklets—one per topic.
• Do not be scared off completely by low levels of literacy. Often, adults who are only partially literate will have family member read the booklet for them.
• Never justify text (which is where you get all the text to line up on the right hand side of the page). People who do not have great reading skills find it much easier to read text that is not justified because each line of text looks different to the others.
• Make the text as large as you can. Obviously, if you have limited funds and need to put a lot of information into one booklet, this becomes difficult. But try to make it possible for older people or people who are partially sighted to read the text.
• Use as much white space as you can. That is, do not fill the page with text.
• Avoid ‘widows and orphans’—which is where you start an idea on one page and finish on another. Also avoid starting sentences or paragraphs on one page and having them run over onto the next page.
b. Pamphlets

Pamphlets are very good information and awareness tools. Since they have much less space than a booklet, they are not that good as educational tools.

All organizations should try to produce at least one pamphlet on their own organization. This should state clearly who you are, what you do and how to contact you. If you produce a number of publications, consider putting out a pamphlet that lists these and says how people can get copies.

Pamphlets can also be used as awareness-raising tools for a variety of human rights issues. They work best if they lead people to other educational methods (publications that you have or workshops you run) within your organization.

Tips:

- Keep pamphlets to an A4 size, either z-folded or three-folded.
- If you can afford color printing, use it, since a pamphlet needs to be as attractive as possible. In some ways, a pamphlet on your organization is actually an advert.
- By keeping publications to A4 size, you can easily photocopy these if you run out or if you cannot afford to print large numbers.
- Keep text to a minimum. Pamphlets should not have more than around one thousand and two hundred words.
- Use the ‘back page’ of the pamphlet for all your contact addresses (and the addresses of other organizations that offer assistance or services). By listing other people’s organizations on your pamphlet, the chances are they will return the favor, giving you free publicity.
- Keep text as simple as you possibly can.
- Avoid graphics, since these take up a lot of space.
- Keep the ‘front page’ of your pamphlet as clean and attractive as possible. Avoid too much writing and don’t start providing information on this page. Instead, put your logo on the front, the name of the pamphlet and not much else.

c. Comics

Comics can be used to provide education in a fun and entertaining way. However, be careful with who you target these at. Many adults regard comics as ‘children’s books’ and will not read them. Some NGOs have reported success with adult comics by using photographs rather than drawings, but this can be expensive to do.

Instead, aim comics at the age group that usually reads them (5 – 18). Within this
age group, be aware that there is a difference between the artwork that appeals to children and that which appeals to older members of the target group. Comics are quite specialized and are usually very expensive to produce. You need to use experts (such as artists and story-tellers) or your activity will fail.

**Tips:**
- Target your comic properly.
- Use proper artists to provide artwork. The primary form of communication in a comic is a combination of image and text but it is the images that people notice first. If your artwork is poor, readers will not be interested in reading the story.
- Use color if you can afford it. In fact, if you cannot afford a color comic, you should perhaps think of using another method.
- Luckily, you can save costs by using very cheap paper (such as recycled newsprint), since most commercial comics are printed on the same paper.
- Keep text to a minimum. Speech bubbles should not cover the page or the images you use.
- Use people who have shown they are able to convey a message by using an interesting story. Comics work best when they tell a proper story and where the characters learn about a particular issue during the story.
- Use simple and straightforward language.

**d. Posters**

Posters serve a number of functions:
- Awareness-raising. For example, you could develop a poster with a simple message on child abuse (rather than an educational booklet on child rights).
- Information. This could be:
  - An advert for an event you are running (like a music concert);
  - An advert for an activity (like a workshop or public meeting);
  - An advert for your organization saying how to contact you; or
  - Even a notice pointing out where the toilets are at a workshop you are conducting.
- Celebrating special days. For example, if your organization focuses on HIV/AIDS issues, you might want to produce a poster commemorating International Aids Day (1 December).

Remember that posters are usually placed where people are passing by. They will usually be stuck on a wall, tree or telephone pole and they are designed to attract the
attention of a wide range of people. Ideally, a poster should have an eye-catching image or design and a slogan or headline. The idea is that someone who is not really looking for the information you are providing is caught by the image or headline. Hopefully, this will cause them to come closer and read the information. Also, because most people put their posters in the same type of places, you will be competing for attention with other ‘advertisers’.

While there are different types of posters, some basic rules remain the same:

- Follow the “one idea—one poster” rule.
- Text needs to be kept to a minimum.
- You need to have an eye-catching image on the poster. While it does not need to be in color, color definitely helps to draw people’s attention.
- You need a slogan to draw people closer.
- You can have a fair amount of information on the poster in much smaller text. Beware that this can only be read from close up though.
- The larger the poster, the better. And the larger your text, the better too.

Before designing a poster, think about where you are going to place it. For example, a poster on your bill of rights that will be given to schools to put up in their classrooms can have a lot more text than one that will be on a street pole. This is because children in class have time to read the poster when they have finished work, are waiting for a teacher and so on. People driving in a minibus past a lamppost have only a few seconds to read your message.

Also, a poster advertising an event or celebrating a particular day will have far less text than one showing how to cast your vote.

Lastly, think about how big the poster should be. A poster that people will only see fleetingly or from far away needs to be much bigger than one that they will have time to read from close up. As a general rule, posters should not be less than A2 size. If you can afford them, A0 posters are usually the most attractive.

Note: A2 is four times the size of an A4 sheet. A0 is sixteen times as large as an A4 sheet (or twice as big as an A1 and four times as big as an A2).

e. Newspaper inserts

A newspaper insert is a ‘pull-out’ section of a newspaper. They are also often called ‘supplements’. It could be any size and address any issue. Most often though, they are a double spread page in the middle of the newspaper.

These more common types of inserts can also be used for almost anything. A good idea though is to use the outside pages for text, your message, your addresses and so
Example

If you have a poster on your bill of rights that you would like teachers to put up in their classrooms, you could develop an insert. Use the inside pages for the poster and the outside pages to provide additional information, such as:

- What are human rights;
- What is the bill of rights;
- Why is the bill of rights important;
- How to teach human rights in schools;
- Some classroom exercises for teaching human rights;
- Some information on your organization and what it does;
- Contact details for your (and possibly other) organization.

Newspaper inserts can be quite expensive. If you are producing an insert that is of a different size to the newspaper (such as a small booklet or pamphlet), it has to be printed and physically inserted into the paper. Ordinarily, you will be expected to pay both costs. You can reduce the costs to your organization (or avoid them completely) by:

- Forming a relationship with the newspapers, so that they carry some or all of the costs. They can advertise the insert in advance, which might make more people buy the newspapers than usual.
- Keeping your insert in black and white.
- Making your insert the same size as the newspaper and making it the middle pages. In this way, the newspaper can be printed as usual with extra pages, saving the cost of having people actually putting the insert into the newspaper after it has been printed.
- Asking advertisers to sponsor the insert. You can put their adverts into the insert if they agree to pay the costs. This is usually much cheaper for them than placing an advert in the newspaper itself. However, beware of who you ask to advertise in this way. For example, you would not want an alcohol manufacturer to place an advert in an insert aimed at children.

f. Newsletters

Many NGOs have developed regular newsletters. These are quite cheap to produce (depending on what paper you choose, whether you use colour, whether you photocopy them or use printing companies and how many you need to produce).
A newsletter can be used to serve a number of purposes:

- Keeping your communities informed of what you have been doing;
- Providing information on what you are planning to do in the near future;
- Advertising new publications you might have produced and, sometimes, distributing copies with the newsletter;
- Providing education on a selected topic for each edition;
- Lobbying and building popular support;
- Public participation (by saying what you are planning and asking for comments).

Newsletters can be printed on any paper, can be any length and can be brought out as often as you choose. Before deciding to produce these though, you need to first think about who you will be sending them to and what this will cost you. For example, you may have to pay postage costs if you are planning on mailing them. You also need to develop a mailing list of people who receive the newsletter. You can do so by using MS Word features that will both keep a mailing list and print sticky labels as required.

**Email newsletters**

Newsletters can also be emailed, which saves printing costs completely. A good example of this is the newsletter produced by Pambuzuka (an organization closely linked to Fahamu). To receive this newsletter and see how it is done, write to the following address and ask to be placed on their mailing list: admin@pambazuka.org

Note though that such a newsletter will only work if the people you want to receive it have access to email.

**Some tips:**

- Use newsprint to save costs (if you are having the newsletter printed);
- If you are only planning to circulate a small number, think about photocopying them. Remember though that you must consider how many pages each one will be and to work out the cost of doing this. Costs will include paper, toner, electricity, wear and tear on your copier and staff hours for someone to actually photocopy, bind, staple, fold and so on.
- If you cannot find sponsors for the newsletter, offer to put their advert on the back page or inside for free.
- Keep the newsletter regular. Decide in advance whether you will produce twelve, six or fewer per year and stick to the plan you set.
- Use photographs of events you have conducted in the newsletter to brighten it up.
• Introduce a letters page so that people can write to you and have their ideas, concerns or comments printed. Invite people to tell you what to think in each issue.
• Have your chairperson or director write a regular column.
• If you are running a competition of any sort, publish an entry form in the newsletter. Also, use the newsletter to advertise the competition and to tell people about the deadline, prizes and so on.
• Once you have run a competition, publish winning entries or information about the winners in the newsletter.
• Choose a name that people will remember and that also means something. Many NGOs use a word in one of the local languages as the name of their newsletter.
• Include a slip that people can fill in if they want to receive regular copies of your newsletter. Remember that people reading it may not be the ones you first sent it to and they may enjoy it so much that they want to subscribe to it. Be sure to add all new subscriptions to your mailing list.
• Keep your language plain and simple.

g. Postcards
Postcards with a human rights message on the front are a good way of raising awareness and popularizing your organization. As something practical people can use, these are very popular.

Tips:
• Use artwork from an existing poster you have produced to make best use of money spent on it.
• Use your logo on the front.
• Print a small human rights message on the back.
• Remember to use thicker paper.

h. Billboards
Billboards are like very large posters and many of the rules are the same. Because billboards are on the side of the road or railway line, most people only see them when travelling past them. As a result, you need to make them attractive and to use as little text as possible on them.
Tips:
• Keep your message simple and use a colorful or striking image.
• Remember that billboards usually remain up much longer than posters. As a result, they are better suited for raising awareness than to advertise an event.
• Billboards are expensive because you have to pay for printing, costs of putting the billboard up and renting the billboard itself. Reduce costs by seeing whether the owners of the billboards will donate space to you if they have a billboard that they have not rented out.
• Drive past, or take a train past billboards to see which are easiest to read. Look at both what the billboards that work best look like and also which sites are best. For example, a billboard at a taxi rank or train station is seen for much longer than one on the side of a busy main road.

i. Banners
Banners are used mainly to advertise your organization or an event. Because of the very high costs involved, you should really only produce banners that can be used over a long period of time or at a wide variety of events. The best example is one that merely has your organization’s name and logo on it. You can use this when holding a press briefing, prize-giving ceremony, event and so on.

The main advantage of a billboard is that it shows up well in photographs of the event you use it at. Make sure that you position it behind the place or person that photographers will concentrate on.

For example, if you are putting on a music concert, hang your banner at the back of the stage. If you are holding a press briefing, put the banner behind the person from your organization who will lead the briefing. Then, when pictures of the event are broadcast on television or printed in a newspaper, your banner will show up clearly.

ADVERTS
There are three main types of adverts your organization could produce:
• Radio adverts;
• Television adverts;
• Newspaper adverts.

All serve more or less the same purpose. Because of the costs, they need to be quite short and so work best for:
• Raising awareness of your organization and what it does;
• Providing information on your organization (such as how to reach you);
• Raising awareness or providing information on a particular issue;
• Advertising an event or competition that you will be running.

Even when dealing with something other than what your organization is or does, you should still mention the name of your organization somewhere in the advert. This helps to advertise the ‘thing’ you are advertising as well as raising awareness of your organization.

Lastly, remember that these are adverts. Whether on radio or television or in a newspaper, they will be competing with other adverts, usually made by companies with far more money than you have. As a result, they need to be attractive, exciting and engaging, otherwise people will ignore them.

a. Radio

The most cost-effective radio advert is one of about thirty seconds, although this may differ from country to country. In any event, the length of time available for a radio event is surprisingly short.

Some tips:
• See if you can get a radio station to offer you free time. Then, at the end of the advert, say something like ‘this advert was brought to you free of charge by Funky FM, the station for the funky at heart’.
• Recording an advert is one of the most expensive parts of producing one. Most radio stations require the advert to be recorded on high quality machines using high quality tape or CD. Try to cut the costs of this by asking the radio station to allow you to use their recording studio.
• Make sure about the radio station before you put your advert on it. For example, how many people listen to it? Is it government controlled? What languages does it broadcast in?
• If the radio station broadcasts in one or more local languages, you may need to translate it. Use staff members to help you. You will also need to record the advert in these various languages.
• Ideally, you should use a voice artist to record the advert. You need someone with a good voice (not too squeaky or soft) and someone who can make the advert sound exciting. See whether there are any members of staff who have a natural talent in this area and use them if you can. (Unfortunately, very few people are good at this and it may cost you more in studio time getting it right than if you paid a professional, who will get it in one or two takes).
Consider your community or local radio stations. They may be much cheaper to use.

b. Television

Unfortunately, television adverts are usually way beyond the reach of most NGOs, since they are very expensive to produce and cost a lot to broadcast. If you are lucky enough to get funding to produce one, make sure that it is of the highest quality you can afford. This is because most people hate adverts on television and you need to capture their attention.

Very few NGOs have the technical know-how or skills to produce a television advert and so you will need to pay someone to develop yours. One way around this is to see whether there is an advertising school near you. Visit the principal of the school or head of department and see whether or not you can convince them to set a project for their students to develop an advert for your organization. Perhaps you could even raise money for a prize for the winning entry. Then, choose the best entry and use it for your advert.

Since there are very few independent television stations, you will probably not be able to get anyone to broadcast your advert for free. However, you can save broadcast fees by asking for your advert to be screened outside of peak viewing times (when time is more expensive).

Lastly, before embarking on a project to develop a television advert, do a lot of research. Check how much it will cost you and how many people that you want to reach actually own televisions. Then compare the cost of the advert with the number of people who will see it and work out whether or not you could use your money more effectively.

c. Newspaper

Newspaper adverts are much cheaper than radio or television adverts. Even so, they are usually too expensive for NGOs to use them regularly. Instead, they are usually only used to celebrate a special day, to advertise an event or competition, or to mobilize the public around an issue.

Many NGOs have staff that are capable of designing an advert, thereby saving a large portion of the costs of producing them. If your organization does not have someone with these skills, you will need to get an agency to help you.

Other costs involved are mainly only the cost of placing the advert.

Some tips:

- The larger your advert, the more expensive. However, the smaller the advert,
the less chance anyone will notice it. Have a look at a newspaper in your area. Which adverts did you notice? Why was this so? Use this information to help you decide what your advert should look like and how big it should be.

• The bigger the circulation of the newspaper, the more expensive the advertising space will be. Before choosing a newspaper, think about who you are trying to reach. If you are advertising an event that only people in your community will be interested in attending, it will not make sense to publish it in a newspaper with a national circulation. Instead, use a local paper that will be much cheaper.

• Adverts with a headline and a graphic or photograph are generally more attractive. Again, look at the adverts in your local newspapers and see for yourself which work better.

• Use the space available to you creatively. For example, if you want to advertise a competition, make the advert a copy of your entry form.

• You can also save costs by using an existing poster as your advert.

d. Events

The term ‘events’ covers a wide range of things, such as:

• Music concerts;
• Football matches;
• Sports days;
• Family days;
• Art exhibitions;
• Events celebrating an important national or international human rights day (such as World Aids Day).

Events are a fun way of raising awareness and providing information. They have a limited role in education though because the main object is to entertain people. However, you can use them as a very good place to distribute your educational publications and, perhaps, to put on an educational drama for children.

All events work in the same way. The idea is to get people to attend a special day, to entertain them and to provide them with some information and awareness at the same time.

e. Drama

Many community drama groups use drama as a way of educating people. It can be a very effective method but it requires acting skills and, like comics, storytelling skills
to work properly. Its major advantage is that drama is engaging and a fun way to learn, particularly for children and youth. It can also be very cheap to produce and does not require literacy skills among the audience.

**Tips:**
- Keep the drama relatively short. People find it hard to concentrate on a story for much longer than an hour and a half.
- Keep costs to a minimum by using few props and costumes.
- Keep the story interesting. Humor is a very good way of doing so, but be careful with jokes you use. For example, don’t tell sexist or ethnic based jokes.
- Keep the number of characters in the story to a minimum to make it easier for people to follow the story.
- Have actors play more than one character—they can show which character they are by the clothes they wear.

**f. Give-aways**

The idea of ‘give-aways’ comes from commercial advertising. The tactic is to give people something they will use that may have a simple human rights message but is more about raising awareness of your organization. The best way of doing this is to simply place your logo and name of your organization on the items listed.

Some of the items listed below are much more expensive to produce than others. Also, some last longer than others and are more visible. Decide from the list which items suit your organization’s needs and target market better.

- **T-shirts.** Perhaps the best give-away of all, these allow you to place a message on one side and your logo and name on the other. They are relatively cheap to produce and last a long time. As an item of clothing, they have value to people who receive them. As a result, people will wear them often, thereby advertising your organization wherever they go. They work really well to commemorate special days or to give away at music concerts. As a general rule, try not to have too much information on them and try to make them look nice as well to encourage people to wear them.
- **Caps.** Like T-shirts, these also advertise your organization wherever they are worn. They are much cheaper than T-shirts as well.
- **Peaks.** These are cardboard strips with a piece of plastic to go around the head. They can be very cheap to produce, although they do not last long. They are very nice give-aways at soccer matches, music concerts and other outside, daytime events.
- Stickers. These are cheap and are fun mainly for younger people, although taxi drivers too can be encouraged to put them on their taxis. Because of their size though, they are quite difficult to see.
- Pens. It is sometimes possible to get cheap pens made with your logo on. While they only really spread your message to people who actually receive them, they are useful at workshops, conferences and to give to schoolchildren.
- Ties. These are expensive to produce and are usually given to visiting funders and other dignitaries.

COMPETITIONS

Running a competition is an effective way of getting people to think about an issue. Examples of the types of competitions you can run include:

- An arts or photography competition;
- A competition to design a poster;
- An essay or poetry competition.

To organize your competition, you need to:

- Develop a proper strategy document and action plan, showing time frames for each part of the process, as well as who is responsible for the work.
- Identify the target. Is it open to all members of the public or only a particular community? Is it open to all age groups or only school goers? Is it open to both children and adults?
- Develop an entry form. This should have basic information about the competition as well as the address where entries need to be sent or dropped off. You need to print as many of these as you can. In some cases, such as when you are targeting school-goers, you can save money by printing one entry form per school.
- Make sure your entry form says, ‘The decision of the judges is final’. This will prevent any arguments at a later stage. Also, if you plan to use the works you receive at a later stage and not to return them to entrants, include a note to this effect. It might say: ‘All entries become the work of Community Support NGO and, by submitting an entry, entrants agree to their work being used in the future without any payment’.
- Make sure you have a prize or prizes (see below).
- Distribute the entry forms to places that suit the target group. For example, if it is open to school-goers only, use the principal of the school to distribute it among the learners.
• Market the competition. If you have the money, produce a radio or newspaper advert. If not, produce a cheap poster and put it up in areas where your targets gather. Try to get newspapers or radio and television stations to interview you about the competition.

• Appoint independent judges. If it is an art competition, look to art teachers or lecturers, or even famous artists, to be the judges. This helps to prevent your organization from being accused of being biased.

• Make sure you have a plan for judging. If you receive thousands of entries, it may be necessary for you to go through these and to exclude those that clearly have missed the point. Otherwise, your judges may get angry with you if they have to read or look at every entry.

• Plan and hold a prize-giving ceremony.

Competitions offer an excellent opportunity to find artwork for posters and pamphlets (even calendars) or to produce books of entries (if you have the money). In this way, you can maximize the effort you put in and also publicly recognize the winners. While you should not pay for using these works, you should at least credit the people who produced them.

**Case study – SAHRC school poster competition**

The South African Human Rights Commission (SAHRC) runs an annual poster competition for all school goers (and adults involved in Adult Basic Training and Education programs). While this started as an ‘arts competition’, asking for people to illustrate their favorite right in the Bill of Rights by producing a picture, collage, poem, song or essay, it soon became apparent to the SAHRC that the process of marking all these entries took too much time. In particular, written work had to be translated into English, which, although done for free by staff members, still took enormous amounts of time, and these had to be read and evaluated.

The SAHRC then decided to make this a poster competition. Each year, a different topic is chosen (such as Child Rights, HIV/AIDS, and so on). Relationships have been developed between the main sponsor (a bank, which provides prize money and pays for posters and entry forms to be printed—using their own artists and printers) and a national newspaper. This newspaper prints a copy of the poster as an advert at no cost to the SAHRC, prints copies of the entry form and carries photographs of past winners, interviews with winners and so on. Further publicity is secured through interviews on radio and television stations. Additional prizes are received from a variety of donors (such as book stores and soft drink companies) and hotels and airlines donate
accommodation and transport for winners from far away.

Judges are chosen from school art teachers or lecturers and heads of creative NGOs. A venue is secured at minimal cost (including using schools that donate their space for free).

Prizes are awarded to the following categories:
- Grades 0 – 3
- Grades 4 – 6
- Grades 7 – 9
- Grades 10 – 12
- Adults taking part in adult basic education programs
- Learners with special educational needs.

The winning entries in each category are then entered into another competition to find the overall winner. This overall winner receives the main prize and their entry is used to develop an official SAHRC poster each year.

A prize giving ceremony is held in Johannesburg and the winners and their family are invited to attend. Entertainment is provided by musicians who work for next to nothing and by school drama or dance groups. Members of the refugee community provide catering (thereby exposing South Africans to other cultures in the hope that this may reduce xenophobia).

SAHRC staff then choose their favorite entries from all of those received to develop the annual SAHRC calendar, which is sent all over the world.

Artwork is also available for use in pamphlets, postcards, booklets and so on.

**Tips:**
- Try to involve a local radio station or newspaper in the competition. For example, offer to print their logo on all publications relating to the competition and to invite them to your prize giving ceremony. Then, get them to advertise the competition on their radio or in their newspaper.
- Ask one of your sponsors to produce a poster for the competition themselves, using their logo and yours on the poster.

**HUMAN RIGHTS AWARDS**

Recognizing the achievements of members of the community you serve in the area of human rights is an effective way of engaging the public and of ensuring that people strive to do more. Awards can be offered to:
- Individuals that have done something commendable;
• NGOs or CBOs [community-based organizations] that have achieved remarkable results;
• Journalists.

To run a human rights award program, you will need to:
• Develop a strategy document;
• Identify categories;
• Call for nominations. This can be done with an advert in the newspaper, using your website, sending invitations to others via email or regular post. Your call for nominations should state clearly what the categories and requirements are and should say how people should motivate their nomination. For example, people could be asked to send copies of the CVs of people they are nominating plus a brief note saying what they have done to qualify and why they think they should win;
• Identify independent judges;
• Plan and hold a prize-giving ceremony.

**Case study – Australian Human Rights and Equal Opportunities Commission (HREOC) Human Rights Awards**

The Australian HREOC runs probably the most successful human rights award program in the world. The awards have been going since 1986 and a major ceremony is held each year on 10 December (International Human Rights Day). The budget for the awards varies depending on what sort of event they decide to have. The HREOC have a full-time organizer for at least two months before the event and part time for about three to four months prior to that. In addition, a media, website and desktop helper is appointed for the month or so before the ceremony.

The HREOC calls for nominations around August. Each year, a different set of awards is available. For example, they may be for the journalist who has done the most to promote human rights, the best NGO and so on. People from different peer groups judge the awards. So, if there is an award for journalists, then a group of journalists decide who should win.

Anyone who wants to come to the ceremony is sent an invitation. Sometimes, a formal luncheon is held and people need to buy their tickets. However, in recent years there has been less interest in huge, expensive luncheons and so, in the last couple of years they have decided not to charge for the ceremony.

A major effort is made to ensure the media attend—for example press releases are sent out, they do some advertising, and advertise on their website. The amount of
media coverage depends very largely on who wins the Human Rights Medal (the major award).

The aim of the Awards is really to keep faith with the community in recognizing good work done over the year.

For more information, visit their web site at: www.humanrights.com.au

DEBATING COMPETITIONS

A good way of encouraging school-goers to think about and understand human rights issues is to organize a school debate competition. Depending on how many schools are in your focus area, this can be a competition run in one school or an inter-school competition.

To run a debating competition, you will need to:

- Develop a proper strategy;
- Choose a topic;
- Choose which schools you will run the competition in—and whether this will be an inter-school competition;
- Find an appropriate prize;
- Choose judges (who could be from your NGO);
- Run the competition;
- Plan and hold a prize-giving ceremony.

Debating competitions can also be run with church groups, youth groups and so on.

SPEECHES AND PRESENTATIONS

As a human rights activist, you could be invited to make a speech or give a presentation from time to time. You could also decide to approach schools in your area to see if they will allow you to do a presentation on human rights from time to time.

PUBLIC DISCUSSIONS

While not competitions, public discussions are a way of encouraging people to think about issues and then allowing them to take part in a discussion of these.

Public discussions can be held at your offices or in a community hall or school. They work best when they are held regularly (such as once a month). The basic idea is that you choose a topic for discussion—anything relevant will do. For example, if there has been an increase in complaints to your organization of sexual harassment, you could hold a discussion on the topic.
You will need to:

- Choose a venue that is big enough to hold the number of people you think will attend. Preferably, someone will donate this space to you;
- Choose a relevant topic;
- Choose speakers to discuss this. You will be looking for people who are very knowledgeable but who can speak in plain, non-legalistic language. Be sure to give your speakers enough time to prepare and to tell them that their input should be kept as simple as possible. (Many ‘knowledgeable’ speakers will try to cite cases and statutes and so on, which is really not helpful to anyone);
- Advertise the event—put up cheap posters, send out flyers and so on. The more frequently you hold these discussions, the less advertising you will need to do;
- Conduct the event. Preferably, you should hold the event in the evening (to increase the numbers of people able to attend) and should provide a light snack and refreshments at your own cost.

The idea is to allow your speaker (or speakers) about a half an hour to discuss the topic before opening the floor to discussion. To maximize the discussion, keep a record of it and include a summary of the discussion in your newsletter, on your web site and so on.

WEBSITES

Should your organization have a website (or should you be able to convince them to have one), use the website to distribute all sorts of materials by putting copies of them on the site that people can download or print. Also include educational materials (such as a training manual) on the site for others to use. You can also use your site to conduct debates, post a competition entry form and so on. Lastly, make sure the site has sufficient information about what your organization does, who it works with and how to contact you.

WEBSITE DISCUSSION FORUMS

If you have a website, you can use it as a place for public discussions as well. For example, you could pose a question on your home page and ask people to post their answers on your discussion forum. While you guide people to this forum by posing a controversial question, you should note that people would discuss all sorts of issues on your forum.
Note
These forums can become problematic and you will need to ask yourself the following question in advance—how much will you allow in the interests of freedom of speech. Some people use these fora to write hateful and hurtful comments, since they can do so and remain anonymous. While some discussion of these issues may be worthwhile, you may want to have a notice saying that such comments will not be permitted. You will then need to visit the site quite frequently and remove any such comments. On the other hand, you may permit them and allow other visitors to address the issues instead.

Case studies
While there is no real reason for discussion forums not to work, two attempts in South Africa have failed badly. The South African Human Rights Commission has one on its website where members of the public are asked to discuss racism in schools. In over a year, only four people have posted their views. One of these actually posted a link to a ‘hate site’—a web site hosted by racists. The other asked a question about how her husband could get compensation for damage caused to his car while it was being unloaded in the USA. An exercise by an NGO (ACCORD) has also failed.

WORKSHOPS
Workshops are perhaps the most effective educational tool for reaching illiterate and semi-literate people. They are also extremely useful for reaching people in areas where there are few (or no) newspapers, and where radio and television do not reach.

USING OTHER PEOPLE’S PRODUCTS
It is possible to convince people producing things that the public use frequently to print a message related to human rights on their product. Since they are already paying printing costs for their packaging, there is no extra cost to them.

Example
In Brazil, many children die because of dehydration. This happens even though there is a really easy way to prevent it, by mixing a little salt and a few spoons of sugar to a glass of water. NGOs focusing on children came together and were able to convince milk producers to include information on preventing dehydration on all milk cartons in the country.

Some common articles that could be used:
• Cold drink tins;
• Maize meal packets;
• Match boxes;
• Sugar packets;
• Milk cartons;
• Candle packets.

While a little harder to achieve, it is possible to convince some governments to print stamps with a human rights message on them. This could be a message about World Aids Day, International Day of the Child or even if you have your own human rights days.

Tips
Keep messages short. A good idea is to have one or two of your rights in your bill of rights printed at a time—in simple language of course. You can then change the message every six months or so.

SOAP OPERAS
Soap operas are television shows that usually broadcast every day. They get their name from the fact that they were used to advertise washing powder to housewives in the USA in the early days of television. They are usually broadcast in the early afternoon.

While very few NGOs could produce a soap opera, there is an interesting case study from Brazil that shows how these can be used.

Case study
Brazil is one of the biggest producers of soap operas in the world. They could be anything from a story about pirates to the lives of the families of football players.

Child rights activists in Brazil decided to get together and to approach the people who make these shows. They were able to convince the producers that child rights were extremely important and the producers agreed to introduce the issues in their soap operas. So, a story about football players would suddenly have a part of the story dealing with a child who has run away from home to be a football player and is now living on the streets. Or, a child in another show might be subjected to abuse and then find out how to discuss this with their parents.

MULTI-MEDIA CAMPAIGNS
Multi-media campaigns are those that use a variety of methods at the same time. Because of this, they are extremely expensive and take a lot of work. If you are able
to raise funds for them though, they are the most effective way of reaching a large audience.

**Case study – Soul City**

Soul City is an NGO based in South Africa, but working throughout the continent. They have been around for about ten years and are regarded as probably the best multimedia campaigners in the world.

Soul City is really a television show based in a hospital. The show was used in the beginning to teach people about health issues. Over the years, it has dealt with issues such as domestic violence, HIV/AIDS, accessing health care, how to run a small business and a whole range of topics that improve the lives of people. The TV show is the main method and has become so popular that it is broadcast in many countries in Africa.

To back up the TV show (which runs at prime time, once a week), a newspaper insert is prepared and carried in a national newspaper on the day of the show. The insert deals with the same issues covered in the show. Sometimes, a whole comic book on the issue is used as an insert.

At the same time, a radio show is broadcast using the same theme. Booklets covering the topics in the show are also produced and distributed.

A spin-off show, series of booklets and other methods has also started, called Soul Buddyz. It uses a group of children in the ten-fourteen-year-old age group and follows their daily lives. It focuses largely on sex and sexuality education and covers issues like child abuse and HIV/AIDS.

Soul City is a massive project, using millions of dollars a year. Visit the Soul City website on: www.soulcity.org.za/.

**A NOTE ON PRIZES**

Some of the methods set out above involve competitions of some sort—and competitions require prizes. While this does not necessarily have to be money, money is unfortunately one of the best ways of getting people to take notice. Even if it is a money prize, it does not have to be a huge sum.

Other examples of prizes:

- Trophies;
- Clothes;
- Holidays;
- Posters (which could be from your own organization), books and other publications;
- CDs and tapes.
In short, prizes can be anything anyone could want. Most importantly though, never underestimate the value of prestige. Many people will take part in a competition just to be able to say they won, particularly if winning shows they are smart, understand human rights or are artistic. Many people will also participate for the publicity they will receive. For example, if you say the winning entry will be published in the local newspaper, more people will enter.

Prizes need to be relevant to your target market. For example, a novel by Chinua Achebe or a bottle of whisky may not be much of an incentive to young children.

Never make the prize the only objective of winning. Ideally, you want people to think about the issue and not about the prize. Instead, try to offer other incentives (such as publicity, using the winning entry to design a poster and so on).

Where do you get prizes? An obvious place to look would be to a funder, but funders are not generally keen on providing prizes—with one notable exception. Funders are prepared to provide prizes for human rights awards, particularly if these are national awards and have achieved a certain level of status. Where it is a small competition though, such as a school poster competition, you may need to look elsewhere.

You could start by approaching local businesses. For example, if there is a local bookstore, you could ask them to donate books as prizes. Next, look to businesses that regularly sponsor local football matches, beauty competitions and so on. These may be prepared to donate prizes if you offer them something in return, such as free advertising (by using their logos on entry forms or posters advertising the competition) and by inviting them to attend the prize-giving ceremony. At the ceremony, to which members of the media will be invited, allow them to hang banners and such in prominent places.

You could also approach community leaders and wealthy people within the community to donate prizes.

Tips

• When running competitions aimed at school goers, try to get prizes for the schools that winners come from as well. This will ensure principals encourage learners to participate. A good example is to provide books for the school library.

• When looking for prizes, beware of:
  – Alcohol;
  – Cigarettes;
  – Prizes from organizations that may be trying to bribe you. For example, your organization may have received a complaint about unfair labor
practices in a particular business. When looking for prizes, be wary of such businesses, since they might expect too much in return;
— Businesses with a bad human rights record in the community;
— Companies with a bad international human rights record. For example, shortly after being implicated in the death of Ken Saro-Wira (a Nigerian activist), Shell (the petrol company) sought to sponsor many human rights awards as a way of improving its image.

**Endnote**

1 For more information on Fahamu and its work, see www.fahamu.org
Informal justice systems play a central role in the lives of many citizens of contemporary Timor-Leste (UNICEF, 2009; Marriott, 2008; Niner, 2007). Resolving disputes swiftly and with a concern for establishing harmony in the material as well as spiritual world, community leaders and elders rather than police are thought to be responsible for maintaining law and order. The literature suggests that this is true also for the way most Timorese deal with domestic violence, a highly prevalent phenomenon in Timor-Leste today. The majority prefers these cases be dealt with by the informal system, even if the woman is seriously injured. Despite the significant majority of Timorese who have confidence in formal courts (77%)2, an even higher number (85%) are confident they will be treated fairly by local justice systems. Similarly, while 64% of those who had been in contact with the formal court system reported feeling “very comfortable” using it, a much higher number (79%) feel comfortable bringing disputes to local administrators of justice (The Asia Foundation, 2008).

A significant proportion of domestic violence cases are being resolved through informal mechanisms, even though the Penal Code of 2009 made domestic violence a public crime, to be investigated and prosecuted by the state regardless of whether a criminal complaint is filed by a victim or not (UNHCHR & UNMIT, 2010); victims likewise cannot request that cases be dropped. Article 2 of the recently enacted Law against domestic violence defines domestic violence broadly as “any act or sequence of acts committed within a family context, with or without cohabitation, by a family member against any other member of that family, where there is a situation of ascendancy, notably physical or economic, in the family relationship, or by a person with regard to another person with whom the former has had an intimate relationship which resulted, or may result, in physical, sexual or

*Annika Kovar is the Access to Justice Adviser to the Public Defender General, UNDP Justice System Program Timor-Leste, Dili, Timor-Leste.
psychological injuries or suffering, economic abuse, including threats such as intimidating acts, bodily harm, aggression, coercion, harassment, or deprivation of freedom” (DRTL, 2010). This review and critique is guided by this definition.

While a number of advantages of informal justice systems can be identified, such as their accessibility, familiarity and legitimacy, literature (Corcoran-Nantes, 2009; Swaine, 2003; Rede Feto, 2009) points out that informal justice mechanisms display serious shortcomings for female victims of domestic violence seeking access to justice. Often cited are a lack of women’s participation and power in decision-making processes, a lack of enforcement of informal decisions and agreements, and a tendency to blame women for violence perpetrated against them. However, other studies, such as Trembath et al. (2010), warn against simplified descriptions of East Timorese custom, culture and gender relations, describing them as multi-layered and adaptable. “Modern” concepts of gender equality are not seen as per se absent from and contradictory to Timorese customary systems.

At the same time, the formal justice system, while only re-established over the course of the past eight years, has not yet been fully developed and offers a problematic route for victims of domestic violence seeking justice. Serious barriers remain for female victims attempting to access their rights and protections under formal justice system, including the lack of basic information and understanding of the formal system itself and formal laws which govern it, the lack of physical access to formal justice institutions in most communities, and reported instances of cases of domestic violence being back to local informal justice systems.

This literature review analyses the existing literature with a focus on the barriers faced by female victims of domestic violence and the local-level dynamics which impact women’s access to justice. The role of local justice processes and local administrators of justice are discussed as well as the experience of other countries in dealing with legal pluralism.

As previous work on gender-based violence concentrates relatively little on informal justice processes (UNFPA, 2005), this paper identifies major gaps in the literature which might lead to inadequate policy making in countering domestic violence in Timor-Leste. Although this paper does not aim at analyzing exhaustively all the research on this topic, we recognize the need for more reliable data on domestic violence issues including: the role of and
power relations between various local administrators of justice; the nature of dispute trajectories across Timor-Leste; the central barriers impacting on women's access to justice; local definitions and concepts of domestic violence; the nature and effects of social pressure; and the reasons motivating a victim and their family to approach either formal or informal authorities.

Finally, this analysis takes into account the possible consequences of the cultural misunderstanding of a very complex reality. Much of the previous research may have approached domestic violence issues from a Western perspective or a centralized one, coming from the capital city, Dili. This has in some instances led to a colored interpretation of the reality of domestic violence in Timor-Leste. As a result, both international donors and agencies have pursued the creation of programs which might affect international rights-based agendas, but not have brought effective solutions to the problem of domestic violence in Timor-Leste.

II. The Context

As described below, Timor-Leste suffers a high incidence of domestic violence. One study (nsd et al., 2010) reports that as much as 36% of Timorese married women have experienced domestic violence. The legal framework, though it technically supplants all informal mechanisms in cases of domestic violence, is little understood and often ignored by actors in informal justice systems, and does not yet adequately clearly define the connection between formal and informal justice systems/actors. As a result, the two systems are interacting in an ad hoc and unpredictable manner.

Domestic violence in Timor-Leste

Data collection on gender-based violence in Timor-Leste, including domestic violence, has been conducted in a disparate manner, creating a risk of being incomplete and relying too much on anecdotal or partial data. Most of the literature relies on complaints registered by police, patients presenting themselves to the hospital emergency room, court reports, and findings generated by non-governmental organizations and other service providers (Rimmer, 2010). Data collection is not uniform; different organizations have used different collection methods, terminology, even definitions of domestic violence, and have classified cases differently. Much of the data does not give sufficient information on the exact nature of domestic violence crimes,
often mixing, for instance, gender-based crimes and child sexual abuse into the same category.

As a result, although a high level of domestic violence can be confirmed, available figures remain inexact. According to the Demography and Health Survey 2009-2010 (NSD et al., 2010), 36% of married women have experienced physical, sexual, or emotional violence by a husband or partner. In 2009, 679 cases of gender-based violence were reported to the police, of which 462 cases were categorized as domestic violence (UNHCHR&UNMIT, 2010). Across all districts of Timor-Leste between 2000 and 2009, domestic violence was the most frequently reported crime to the Vulnerable Persons Unit exceeding all other gender-based crimes within its mandate (Rimmer, 2010). According to Rede Feto (2009), from 2004 (30 cases) until 2008 (117 cases) the number of domestic violence cases reported to FOKUPERS, a non-governmental organization, increased from year to year. Yet, it should be kept in mind that cases of domestic violence are thought to be very much underreported in Timor-Leste with only a fraction of crimes being brought to the attention of the police or service providers (IRIN News, 2010).

In the vast majority of these cases, the perpetrator of violence is a man and the victim is a woman (Pereira, 2001) while at least one survey found younger urban women are most likely to experience domestic violence (The Asia Foundation, 2004). A UNFPA (2005) study found that insults were the most common type of violence, followed by slapping or twisting an arm, and forced sex. The most common injuries included psychological difficulties, loss of consciousness, bruises, scrapes, deep wounds and cuts, and unwanted pregnancies. Almost one fifth of all women presenting at emergency rooms in Dili and Baucau hospitals between 2006 and 2008 were recorded as victims of domestic violence, with the proportion rising to one-third for women aged 20-39 years (TLAVA, 2009).

Despite this apparently high prevalence, according to a 2008 survey conducted by the Asia Foundation, only 15 percent of Timorese claim to have experienced domestic violence within their family in the previous two years. On the other hand, 45% of police officers surveyed in 2008 point to domestic violence as the most serious security problem facing the area in which they work – a much higher proportion than for any other crime (Chinn & Everett, 2008). This dichotomy might suggest that the understanding of domestic violence among the general population differs significantly from the definition of domestic violence established by the law.
The data furthermore does not offer enough information on the percentage of cases that have been pursued before and after the promulgation of the law against domestic violence (2010) or any other data on the sentences applied in domestic violence related cases.

**Legal background**

The Constitution of Timor-Leste provides for equality before the law for all citizens, male and female, with all citizens exercising the same rights and being subject to the same duties. The Constitution also grants equality between women and men in the context of family relations (Article 39). Section 9 furthermore determines that “all rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of East Timor shall be invalid” (DRTL, 2002). Timor-Leste has acceded to a number of core human rights covenants including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and the Convention on the Rights of the Child. This framework prohibits any state discrimination against female victims when dealing with cases of domestic violence (Grenfell, 2006).

While domestic violence was considered a criminal offence in East Timor during the Indonesian occupation (and afterward) as articulated in the Indonesian Penal Code, this provision has rarely been used to prosecute offenders (Grenfell, 2006). In March 2009, Timor-Leste’s Penal Code was enacted, which established “mistreatment of a spouse” (equated to domestic violence) as a public crime, ensuring criminal proceedings do not depend on a formal complaint from the victim; this means the state is obliged to investigate and prosecute crimes of domestic violence, regardless of whether a victim files a complaint—technically a citizen can file a complaint with the police about any case they become aware of (CEDAW, 2009; UNHCHR&UNMIT, 2010). Unlike semi-public crimes, a criminal case may be carried forward by the state justice system, regardless of a victim’s wishes that it be dropped.

These provisions are supplemented by the recently enacted law against domestic violence of May 2010. Article 2 of the law defines domestic violence broadly to include physical, psychological, economic and sexual mis-
treatment. It provides protection to family members, including spouses and ex-spouses, ascendants/descendants and domestic workers (Article 3). According to Articles 15 and 16, victims of domestic violence will be eligible to receive rehabilitative services, including shelter access, legal representation, medical and psychological assistance, and in justifiable cases, training on personal, professional and social skills in order to “contribute to their successful social reintegration”. Article 24 obliges police officers, when necessary, to refer victims to a shelter or legal and medical services and inform victims of their rights and the status of their cases. They must file a report with the Office of the Public Prosecutor within five days of receiving information about the case (drtl, 2010).

Until the recent enactment of the Penal Code and the law against domestic violence, it was local community authorities who, according to Decree Law No. 5 of 2004 on the Authority of the Communities, had the responsibility to “provide for the creation of grassroots structures for the settlement and resolution of minor disputes”. The Decree Law was replaced by Law 3/2009 on Community Leadership and their Election which requires suco (village) leaders to promote the creation of mechanisms for preventing domestic violence and support initiatives aimed at monitoring and protecting victims of domestic violence and punishing the aggressor (drtl, 2009).

In the absence of specific legislation governing the relation of formal and informal law, the Constitution provides the only vague guidelines in this respect. Section 2(4) provides that “the State shall recognize and value the norms and customs of East Timor that are not contrary to the Constitution and to any legislation dealing specifically with customary law” (drtl, 2002). Some writers interpret this section as giving only “symbolic respect” to informal law (O’Reilly & Jevtovic, 2008); others such as Grenfell (2006) argue that while this section does not require courts to apply local law as part of Timor-Leste’s body of formal law, by giving recognition to local norms and customs this section intends to direct the courts to have regard to local customary law. What is clear is that according to Article 2 of the law on community leaders and their election, the decisions of suco chiefs and suco councils are not binding on the State (drtl, 2009).

While the legal framework prescribes that crimes such as domestic violence cannot be dealt with by local systems, there is no explicit law or policy establishing a legal framework for linking informal practices to the formal justice system (World Bank, 2006; UNFPA, 2005). Article 55 of the Penal
Code recognizes reconciliation between victim and perpetrator as a general mitigating circumstance (DRTL, 2009), giving space for local agreements to be considered by formal courts. In practice, courts seem to make use of this provision by taking notice of out-of-court agreements reached through local law (Grenfell, 2009). For instance, one case of physical assault was dismissed by a judge in Same in October 2010 after the parties presented a peace agreement stating that the case had been resolved using informal law.9

Informal justice in Timor-Leste

The literature often refers to informal justice in Timor-Leste using the Indonesian term adat, while the proper Tetum term for Timor-Leste’s various systems of local justice is lisan (Harrington, 2006). It must be noted, however, that lisan is a broad term encompassing not only local law and prohibitions, but also social norms and morality, art and rituals, as well as a system of community leadership and governance (Babo-Soares, 2009; Butt et al., 2009).

As emphasized by the majority of the literature, lisan systems across Timor-Leste are highly diverse and localized. There is no unified Timorese informal legal system; there is rather a collection or plurality of local practices (Graydon, 2005; Swaine, 2003; Bye, 2005; Marriott, 2008; UNFPA, 2005). As a result, the ways in which women access local justice and the implications thereof vary from place to place, within single localities, and even from case to case depending on the nature and gravity. There is therefore not one uniform experience of how local justice is used. As local law is usually not written down or standardized, it is subject to the different personalities involved and their own interpretations of how justice should be administered with the effect that rulings may not be consistent (Swaine, 2003; Alves et al., 2009).

This is unsurprising as it is the very context in which local law exists which breathes life into its contents, interpretations and application. Stemming from its very nature, a conventional, stereotypical local justice process or outcome cannot be described definitively. Yet, several authors point out that a number of core traits and common values can be identified (UNFPA, 2005; Graydon, 2005; Butt et al., 2009). These include first and foremost their predominantly oral practice and transmission (Graydon, 2005; ISMP, 2002), though some communities in Liquica district have reportedly produced written regulations of informal justice mechanisms, in-
cluding regulations specifically dealing with domestic and sexual violence (Myrttinen et al., 2010).

Another common feature and one of the main differences regarding formal law is the prioritization of the community and collective rights over individual rights, based on a concern to establish and maintain community harmony and stability (Butt et al., 2009; Babo-Soares, 2004). Focusing on the survival and peaceful existence of the community as a whole, local legal systems generally serve a different purpose than the protection of individual rights championed by formal and human rights law. Informal law thus addresses domestic violence more as an offence against the community and social relations between families rather than an offence against an individual (Grenfell, 2006; USAID, 2010).

A number of authors (Zifcak, 2004; Hohe & Nixon, 2003) report that in the localities they visited this collective approach can be explained by the existence of a refined socio-cosmic belief system in which kinship concepts are woven into most aspects of life and where supernatural ancestral powers function as controlling and life-giving forces. A need to maintain a cosmic equilibrium based on social reciprocity and exchange lies at the heart of this belief system. Therefore, informal justice is characterized by the need for the replacement of values which were disturbed by a wrongdoing in order to stabilize the cosmic flow, and the need for social reconciliation to ensure continued harmony within the community. Penalties negotiated between a local tribunal and the parties reflect the belief that a wrongdoing creates a debt that must be repaid not only to the victim but also to the wider community. Every effort is thus made to mediate proceedings, and it is expected that the opposing party will act in a forgiving manner and seek to agree upon a compensation, thus paving the way for peaceful relations in the future (Zifcak, 2004; Hohe & Nixon, 2003). These ancient narratives, myths and rituals are a source of, and influence on, local justice systems and principles, along with stories of more recent historical experience recited by customary elders (Zifcak, 2004). Decisions reached with local authorities in turn become part of the body of local law, to be referenced in future dispute resolutions and relied upon by villagers in the maintenance of their rights (JSMP, 2002).
III. Informal Justice Processes in Cases of Domestic Violence

The procedures of dispensing local justice also share a number of similarities. Informal processes usually involve each of the parties providing their version of the events, a process of mediation or arbitration where family elders or community leaders decide who is at fault and then oversee an agreement. Local agreements most commonly result in the payment of compensation but can include other sanctions such as oral or written undertakings to not re-offend, community work, or public shaming. Where an agreement between the parties is reached, it is generally sealed by symbolic acts of reconciliation which includes most often drinking or eating together (Graydon, 2005). The following chapter describes these processes, as applied in cases of domestic violence, discusses their advantages and disadvantages and identifies central authorities in the administration of local justice.

Local administrators of justice

The literature identifies three central figures regarding local dispute resolution: the Chefe de Suco (elected Head of the village), Chefe de Aldeia (elected Head of the hamlet) and lian nain (customary authority who makes decisions based on customary rules and norms). Besides these three main figures, a number of other local authorities such as church representatives and village elders are also identified as conducting local justice processes. In particular cases of domestic violence, however, usually the first attempt at resolving such an issue is undertaken by family members of the victim and the perpetrator. Family elders, a family’s lian nain or a family’s spokesperson therefore can play a crucial role in resolving cases of domestic violence. The community’s lian nain, the Chefe de Aldeia or Chefe de Suco usually only become involved once family mediation has failed (Swaine, 2003; UNFPA, 2005; Rede Feto, 2009). This is confirmed by a recent survey of the Asia Foundation (2008) according to which aldeia chiefs (26%), suco chiefs (22%), families (22%) and elders (16%) are the most common authorities approached to resolve domestic violence issues. Despite domestic violence being criminalized, only 7% of respondents said they first contacted the police, confirming Timorese prefer mediation processes in cases of domestic violence to remain in the realm of families and communities.

As women rarely hold any of the described positions, most family or community authorities involved in dispute resolution are men (USAID, 2004;
Swaine, 2003) with an estimated 2% of local authorities responsible for dispute resolution in Timor-Leste being women (OPE, 2007). In many areas, for instance in Liquica district, women are prohibited from holding traditional leadership positions such as that of the lian nain (Myrttinen et al., 2010). Even in matrilineal clans, women are often not necessarily expected to perform leadership roles. This lack of women local leaders is seen by some as impacting on the treatment of women in local justice processes, though the impact can neither be quantified nor definitively proven (OPE, 2007).

It is important to note that in Timor-Leste, the political or “worldly” domain is not the only source of dispute resolution authority since within Timorese communities, political authority is contrasted with, and often subject to, appeals of a supernatural character. This interaction between political authority and spiritual beliefs can have a strong impact on the nature of local justice processes and outcomes. At the community level, a ritual authority is responsible for contact with the ancestors, while political authorities are responsible for the political and profane world. They are the executives, responsible for the maintenance of judicial order and external relations. As such, the political authority is the focal point for the “outside” society (Hohe & Nixon, 2003). Ospina and Hohe (2001) found many similar examples for this dualistic concept of power across different districts, concluding that the majority of the rural population still orders their world according to this paradigm. It must be noted, however, that this dualistic power structure is not necessarily universal in Timor-Leste. Nixon (2008b) points out that in some parts of Oecusse, ideally—but not necessarily—ritual and political authority overlap.

Ritual authorities

The lian nain—and their analog in non-Tetum speaking communities, such as the rosatan in Tetum Terik language communities—are the custodians and interpreters of Timorese animistic cosmology. They are the “owners of the word” and they play a central role in the resolution of local disputes. In doing so, they seek to negotiate the relationship between communities and their material as well as spiritual environment which is key to a community’s survival (Marriot, 2010; Hohe & Nixon, 2003). While in some instances, lian nain are chosen by the community due to their mediation skills, more typically, the lian nain hold that position as a result of their family lineage and the powers that have been vested in them from the ancestors (Swaine, 2003).
The *lian nain* are thought to know the history of the community and of families, including their marriage and kinship relations which often determine the amount of compensation to be paid for a crime. They are connected to the sacred sphere and know the rules the ancestors have set, providing them with the competence to speak the law and make decisions for society. Yet, they are not supposed to be connected to the outside world and therefore only pass on their decisions to the political authorities. As a result, Timorese ritual authorities are often seen by outsiders to play a minor role while in reality, they can have immense influence and power. In some communities, the last agreement to a decision has to be made by the ritual authority, rendering the political authority inferior to the ritual powers (Hohe & Nixon, 2003; Hohe, 2003; Ospina & Hohe, 2001). In other contexts, it is emphasized that the final decision must be based on a consensus of all the law experts, including both ritual and political authorities in order to assure that a decision is in harmony with the different aspects of the cosmos (Hohe, 2003).

While the majority of the literature focuses on the *lian nain* as ritual authority, Trinidade and Castro (2007) identify a second figure, the *dato*. A *dato* is described as an authority connected to the spiritual world who makes decisions based on the ancestral order and determines social norms. According to these authors, in a local justice process, the *dato* must approve that a decision or agreement is in accordance with the spirit world while the *lian nain* must approve that it is in accordance with historical precedents and tradition. The political authority, in turn, acts as witness and gives final approval. It should be noted that Trinidade and Castro’s paper is the only paper reviewed which refers to the *dato* in this way. While very little of the literature mentions the *dato* at all, Swaine (2003) refers to the *dato* as another term for *lian nain*, thus contradicting the above definition of Trinidade and Castro, and exemplifying how incomplete the available information on traditional authority structures and figures in Timor-Leste is.

Another example of a lack of information concerns the role of the Church in dispute resolution. Marriott (2001) argues that in some areas, Catholic priests perform a similar role as the *lian nain*, and appear to be displacing other actors in dispute resolution. While it is clear the Catholic Church plays an active role in dispute resolution—UNFPA (2005) for instance finds that church officials are involved at various stages of dispute resolution in around 30% of cases—priests are generally reported to attend local jus-
practice proceedings as witnesses or to make suggestions, not as decision-takers (Mearns, 2002; Grenfell, 2006; Ospina & Hohe, 2001; Alves et al., 2009).

**Political authorities**

The foremost political authorities at the local level in Timor are the elected village and hamlet chiefs, the *Chefe de Suco* and *Chefe de Aldeia*, established as “community authorities” by Decree Law No. 5 in 2004. Some authors, such as Zifcak (2004) argue that while political and ritual authorities frequently act in concert, to a significant degree, the responsibility for local dispute resolution and substantive decision-making has shifted from the *lian nain* to the *Chefe de Suco* and *Chefe de Aldeia*.

Chiefs (*Chefes*) are often approached when neither families nor *lian nain* succeed in resolving a case (Alves et al., 2009). While in some contexts, the political authority’s acceptance of agreements is necessary to legitimize the resolution of disputes (Trindade & Castro, 2007), chiefs are never the ones to recount history, as this domain is reserved for the *lian nain*. Since the political authority represents the link to the outside world, the village chief is eventually the one taking a case up to a higher entity, such as the police (Hohe & Nixon, 2003).

While the law on community authorities requires chiefs to be chosen through elections, elected chiefs may come from specific *liurai* (highest social class) families who hold hereditary privileges for political authority (Hohe & Nixon, 2003; USAID, 2004). The village chief therefore represents the junction point where clandestine powers, traditional political concepts and the modern outside world run together (Ospina & Hohe, 2001). Those *liurai* who have not been elected to the office of chief are still considered legitimate in many rural settings and are able to exercise influence on local people while elected local leaders often maintain close relationships with them (Trindade & Castro, 2007; Cummins, 2010).

While the literature clearly identifies the *lian nain* and the village and hamlet chiefs as the most powerful actors in dispute resolution, the power relation among these actors remains unclear. It is unclear how far decision-making power has shifted from the *lian nain* to the chiefs and how far ritual authorities are still able to control local justice processes. The significance of other involved actors, such as the Catholic Church, the *dato* or the *liurai* also requires further research.
Local justice proceedings

Local justice processes in cases of domestic violence generally start at the family level and are usually initiated by the woman’s family (Alves et al., 2009; Swaine, 2003; UNFPA, 2005; USAID, 2009). Since marriage is not only seen as the alliance between two individuals, but seals an intricate set of relationships, obligations and reciprocity between the bride’s and groom’s extended families, cases of domestic violence become the responsibility of the respective family heads. Usually, the conflict is brought to a more public level only when family mediation fails (Rede Feto, 2009; Hohe & Nixon, 2003; Ospina & Hohe, 2001). UNFPA (2005) found that of those women seeking help from somebody in cases of domestic abuse, the majority chose to inform female relatives (50.8%) or friends (50.7%) while 84% strongly agreed with the statement “family problems should only be discussed with people in the family”.

Dispute resolution at the family level usually entails members of the family coming together to discuss the issue, sometimes with the help of the family’s spokesmen, the family lian nain or family elders. A hearing takes place where the victim and the accused present their stories while statements from witnesses may also be heard. The administrators of the hearing weigh the stories presented, and apportion blame to one or both parties with the negotiations and decisions normally being dominated by men (Swaine, 2003; UNFPA, 2005; Rede Feto, 2009). Often, these negotiations involve the family of the victim asking for compensation to be paid by the perpetrator and/or his family (Swaine, 2003; Grenfell, 2006; Mearns, 2002; Butt et al., 2009). The literature identifies different ways in which the payment of compensation is administered. For instance, in the districts of Ainaro and Cova Lima, Swaine (2003) encountered cases in which the perpetrator himself was asked to pay compensation to the victim’s family as well as cases in which an exchange of goods between the two families took place (though “family” was not defined).

Thus, local justice processes do not necessarily involve actors from the wider community but often occur wholly or initially within the family. The involvement and influence of the victim’s family is instrumental in women’s access to and achievement of justice as it is usually family members that decide whether to utilize family, local justice or police structures. Without family support, certain women interviewed by Swaine (2003) did not feel confident or empowered to approach local justice.
If no agreement can be found at the family level, the victim or their family can take the case to higher levels of local justice, including hamlet, village, and sub-district levels (Swaine, 2003; UNFPA, 2005; Alves et al., 2009; Grenfell, 2006; UNFPA, 2005). While in some sucos, dispute resolution processes follow a strict hierarchy—sometimes described as “climbing a ladder”, where an unresolved dispute moves progressively “up” from the extended family to aldeia to suco and ultimately to sub-district level (Cummins, 2010)—in other contexts, women or their families might seek justice directly at the aldeia or suco level, bypassing one or all of the lower levels. The authority approached on a higher level, however, will usually take into account the work of the previous authority (Swaine, 2003). The police are generally considered to be the last resort after all traditional processes have been exhausted (Alves et al., 2009; Grenfell, 2006).

When a case is reported to the village or hamlet chief, dispute resolution meetings are usually set up the next day or in the very near future. The time issue is important; social discord threatens the continuation of life in the community as it could attract the wrath of the ancestors (Hohe & Nixon, 2003). The composition of these meetings varies—while in some areas strictly traditional authorities are present, in others “society representatives” such as the suco council or Church representatives may also take part (Hohe, 2003; Butt et al., 2009), or the chief may seek the assistance of a “council of elders” (Grenfell, 2006). Research conducted in Cova Lima and Bobonaro Districts found village leaders in some communities chose a council of independent individuals to resolve disputes such as domestic violence. If this council could not resolve the matter, it would be submitted to community leaders at the district level, who would then select a council. In some cases, the District Administrator may be involved as observer or mediator (Alves et al., 2009). In many Timorese communities the respective authority who hears a dispute receives payment for their services, usually in the form of an animal, provided by the perpetrator (Butt et al., 2009).

Members of the community usually attend such meetings as observers and in some contexts they are permitted, even encouraged, to contribute to the discussions (Butt et al., 2009). In other contexts, the actual speaking and negotiating is mainly done by the authorities, particularly the lian nain (Hohe, 2003), who weigh the information received from the victim, perpetrator and the witnesses. Here, the role of the victim’s family in defending and speaking out for her can be crucial. However, women from another area
are potentially disadvantaged if her family members cannot attend to speak
in her favor (Swaine, 2003).

After hearing the case, the approached authority or authorities deter-
mine a punishment of the perpetrator. In cases of domestic violence, this
can range from receiving moral advice from the elders to the exchange of
money or a significant animal or public acts of shaming (UNFPA, 2005). For
instance, the husband may be obliged to carry his wife around the village
so everybody will know what happened (Swaine, 2003). Often, perpetrators
of domestic violence need to speak an oath sanctioned by the lian nain or
sign an agreement declaring not to repeat the offence (Ospina, 2006; Alves
et al., 2009).

The most common outcome if a man is blamed for an incidence of
violence against his wife, however, is payment of compensation to the vic-
tim’s family. It is the victim’s family who receives the compensation since
such crimes are seen as an offence against the entire family, not only against
the victim as an individual (UNFPA, 2005; Swaine, 2003; Grenfell, 2006). The
purpose of such compensation is closely related to a set of spiritual beliefs
according to which cases of domestic violence are thought to create a dis-
order in the world of social relationships, threatening the peaceful living
together of a community and affecting the cosmic flow of values. Social
or physical harm to another therefore produces a substantial debt for the
perpetrator and his family towards the victim’s family or even the whole
community. The punishment therefore needs to restore the imbalance of
values that has occurred. Once this has been achieved, the way is open to the
important stage of reconciliation. This consists of some form of ceremony,
usually feasting, which ensures that both sides have re-established a peace-
ful relationship and that the ancestors are appeased. This means that the
perpetrator cannot simply be punished or removed from the community
for what he has done, but the two parties need to be reconciled in order
to re-establish the cosmic equilibrium. Imprisonment or the imposition of
a fine payable to the State will not obviate the necessity to pay one’s debt
to the harmed party—potentially leading to situations of “double jeopardy”
for those judged, imprisoned or ordered to pay fines by the State, simulta-
neously judged and found responsible for compensation to the community
for the same issue (Swaine, 2003; Hohe&Nixon, 2003; Mearns, 2002; Hohe,
2003). This is a crucial divide between formal and informal justice systems.
Despite its high social importance, some authors are critical of this system of compensation. For instance, Grenfell (2006) opposes the fact that compensation is made to the family of the woman and not to the victim herself, and the fact that compensation paid by the husband himself effectively penalizes his wife whose economic means which may be based on her husband’s are decreased. Some authors point out that while local Timorese systems of justice might give the impression of offering women the option of appeal, in reality, social pressures make appealing a decision from a local leader a practical impossibility, particularly if a ritual authority’s decision is seen as sacred—in which case it may not be considered at all. Therefore, while options for appeal are technically available, women may be afraid to anger the authority who made the original decision or may be pressured into accepting the original ruling (OPE, 2007; Swaine, 2003).

Critique of local justice systems

In addition to the above mentioned critique of the system of compensation and the lack of realistic options of appeal, further criticism has been voiced regarding processes of local justice in cases of domestic violence, such as the lack of participation and decision-making power of women in these processes, the related enforcement of patriarchal power relations, lack of enforceability of the taken decisions and agreements, and the nature of some of the underlying principles of justice. Despite these controversial issues, local justice remains the dominant mechanism dealing with cases of domestic violence today and there is no reason to believe this role will change in the future—regardless of the formal justice system’s status. According to a recent survey (The Asia Foundation, 2008), 83% of Timorese approach local authorities instead of formal justice actors in cases of domestic violence.

Lack of participation of women

One major area of concern identified by the literature is the lack of women’s participation in informal justice hearings with women’s participation being minimal and often superficial (ADB, 2005; Rede Feto, 2009). Even when women victims and offenders are able to take part in the discussion of their case, they often feel that their needs and input are ignored and instead, rulings are based on the administrators of justice’s own biases regarding
women’s status in society serving to reinforce the social situation (Grenfell, 2006; Swaine, 2003).

The Asia Foundation (2004) found that while a strong majority of East Timorese believe that women can (63%) and should be able (69%) to speak for themselves in local justice processes, there are major differences in attitude according to geographic lines. While three-quarters of urban citizens say a woman has the option of speaking for herself, only 58% of rural citizens agree, along with 53% in Oecusse and only 39% in the Central region. Similarly, eight in ten urbanites support female participation, while just two-thirds of rural residents do with citizens in Oecusse (52%) and the central region (48%) being least supportive. A number of case studies support this data. Cummins (2010) finds that in Ainaro and Fatulia only men can speak in dispute resolution ceremonies, including in domestic violence cases, while Alves et al. (2009) report that in Bobonaro and Cova Lima, the perpetrator would always be present to answer questions unlike the victim who would be represented by members of her family and thus is unable to speak for herself.

Regarding the districts of Ainaro, Cova Lima and Oecusse, Swaine (2003) explains the fact that more men than women act as ultimate decision-makers in local justice with a common practice of recognizing only those who are given the power to do so by the ancestors, and as a result women are frequently denied a strong role in decision-making. In areas where Community Councils have been established, a female youth representative from the council might be present during a hearing, and might be able to speak. Cummins (2010), however, reports that unlike male youth, it is much less common for women’s representatives to be invited to participate or assist in dispute resolution. They are therefore unable to represent women’s interests, even in the most serious of domestic violence cases. If women have little influence on decision-making, existing patriarchal attitudes are likely to be reinforced through local judgments. While the process of enforcing social norms may be crucial to the collective interests of a community in the context of the community’s socio-cosmic beliefs, this process may entrench underlying values and practices which render vulnerable groups such as women susceptible to violations of their rights (Swaine, 2003; TLAVA, 2009; Graydon, 2005). Nevertheless, it would be wrong to assume that local systems are inherently opposed to change. Custom and tra-
dition are never fixed but rather constantly evolving, thus allowing for a high level of flexibility and adaptability.

**Lack of enforcement for local rulings**

Even when a hearing succeeds in putting blame on the perpetrator of domestic violence, the victim cannot be guaranteed the original problem will stop. It has been suggested that awarded fines may not serve as a deterrent if they are not significant enough and may create a risk that wealthier people are able to re-offend without having to fear severe punishment (UNFPA, 2005; O’Reilly & Jevtovic, 2008; Rede Feto, 2009; Swaine, 2003).

In general, local administrators of justice have little power to enforce their rulings. This is so in regard to the actual payment of the agreed-upon compensation as well as the prevention of further violence. There are simply no means available to protect a victim from further abuse (UNFPA, 2005; Swaine, 2003; ADB, 2005). Some women from remote areas interviewed by Swaine (2003) see a role for the police in enforcing local agreements. These women felt that if they had access to the police they would have the power to make the offender pay.

The effectiveness or binding, compelling nature of local agreements fully depends upon the moral authority of the decision-makers and the social pressure generated by the public nature of the proceedings occurring within small communities. The effects of local rulings therefore are hardly predictable and may vary according to the different personalities involved and community dynamics at play (Graydon, 2005; UNICEF, 2009). Social pressure can be highly effective in guiding behavior in Timor-Leste’s communities, influencing, for instance, victims’ reporting behavior of domestic violence. As described in part IV, victims are often reluctant to report a crime in order to protect the good name of their or the abuser’s family, particularly since permitting one’s family name to be tarnished is thought to cause an imbalance in the social and ancestral order. As the payment of compensation is thought to be crucial to re-establish such balance, it is noteworthy that social pressure on the perpetrator seems to be less pronounced and/or effective than pressure on victims. The reviewed literature does not address this issue thoroughly and cannot explain why social pressures seem to be more effective in some circumstances than others, requiring further research.
Justice principles

While local systems of justice are based on the desire to maintain social unity and peace, embedded in a complex set of spiritual beliefs and practices, these principles of justice as applied in domestic violence cases have provoked criticism from some authors.

For instance, violence is not always seen as wrong per se. In some areas such as Los Palos, a distinction between unjustified abuse and justifiable abuse seems to exist. Corcoran-Nantes (2009) found no support for the former but a significant acceptance of the latter. In local mediation processes, the emphasis is often put on the events prior to the violence and on the woman’s behavior that might have caused the violence, such as not cooking a meal, or failure to prioritize her responsibilities as a wife or mother. Whoever is seen to be at fault prior to the violence is then blamed for the act of violence—this can be the accused, the victim or both (Corcoran-Nantes, 2009; Swaine, 2003). This focus on who is to blame for the violence in effect demeans the seriousness of the act of violence itself, displaying a lack of appreciation for the seriousness of domestic violence as an offense (Cummins, 2010; Swaine, 2003).

Swaine (2003) furthermore describes local administrators of justice as having “simple solutions” in resolving cases of domestic violence, namely to keep the family together, even in cases of serious violence in order to maintain the social arrangement that was established through the marriage system and payment of the bride price. Local justice processes are therefore being criticized for overlooking criminal offenses in the interest of maintaining social norms and an established social system, which may force victims of domestic violence to remain in violent relationships (Cummins, 2010; O’Reilly & Jevtovic, 2008). On the other hand, the marriage system is described as being at the center of Timorese social networks, creating the basis for peaceful relations between families and establishing a network of solidarity between them (Babo-Soares, 2009; Ospina, 2006; Alves, 2009; Mearns, 2002). The aim of local law to keep the family together therefore should not be viewed in simplistic terms but must be understood in the context of the collectivist nature of local informal systems.

Advantages of local justice systems

Despite these perceived negative aspects, local justice mechanisms continue to be highly regarded throughout Timor-Leste. Surveys of the Asia
Foundation (2004; 2008) show that while confidence in the fairness of informal and formal justice dropped between 2004 and 2008, a majority of 85% remain confident in local justice mechanisms, compared to 77% who are confident in the fairness of the formal justice system, and 90% who are confident in the police. In 2008, an overwhelming 92% say they are more comfortable with the informal system than the formal court system—an 8% increase compared to 2004, when 86% said that informal justice protects rights, including women’s rights. Formal courts are perceived to be less accessible, less fair, less protective of rights, and less reflective of community values. Yet, 85% of those who have heard of a formal court before would want a judge from the formal court system to come to their area to help settle disputes—a clear increase compared to four years earlier when only 52% approved of such an option.

The reasons for this favorable assessment of informal justice as identified by the literature include its accessibility (local justice is available in each hamlet and village, while formal justice institutions might be too distant for many villagers to reach), affordability (many villagers are unable to afford a formal process while local systems of law are seen to be relatively inexpensive), familiarity (Timor-Leste’s formal justice system only developed over the last eight years) and the use of local languages, speed and legitimacy (Nixon, 2008; Butt et al., 2009; Graydon, 2005; O’Reilly & Jevtovic, 2008; Grenfell, 2006).

Furthermore, some features of the state justice system are at odds with local culture and anticipated outcomes, such as the need for reconciliation between the parties which is not achieved within the formal system (O’Reilly & Jevtovic, 2008). Local mechanisms on the other hand are perceived to promote strong family relationships and a sense of community values, both of which are crucial in the context of small, close-knit communities (Graydon, 2005; Butt et al., 2009).

In this regard, local justice is capable of taking into account the spiritual beliefs of a community, which impinge directly on the delivery of justice and the resolution of disputes (Mearns, 2002). Lisan is not merely an alternative form of dispute resolution, but describes a different worldview that acknowledges the continuing presence of the ancestors within daily life and the principle of maintaining communal balance through long-term reciprocal exchange. Failure to observe these rituals are thought to have serious negative consequences such as the spread of disease, harvest failure or natural disasters (Cummins, 2010; World Bank, 2010b; UNICEF, 2009). With lo-
cal justice processes being in accord with community traditions and beliefs, local decision-makers are therefore perceived to be better able to generate regionally appropriate decisions (Butt et al., 2009).

IV. Barriers to Women’s Access to Formal Justice

In their survey on community perceptions of the police, Chinn and Everett (2008) found that citizens and community leaders do not display clear preferences for how to deal with incidents of domestic violence, with responses spread fairly evenly across several approaches. These include seeking assistance from the police, the suco council elder, other family or community members, and negotiating directly with the husband. The diversity of responses was greater than for any other type of crime and may indicate that there is less clarity about which authority can provide an appropriate solution for this type of violence, or is perceived to be able to do so. The majority of preferred approaches, however, are of an informal nature (80%) with only around one-fifth of citizens preferring to go to the police. While male and female respondents express similar preferences, community leaders have a somewhat stronger preference (29%) for initial involvement of the police. These findings correspond to those of JSMP (2006b) according to which 75% of domestic violence clients choose to resolve their cases through mediation, whether by the family, police or other mediators, with only 25% proceeding through the formal justice system.

Of the cases which are reported to the police, however, only a fraction proceeds to court. Part of the reason for this phenomenon, as some authors report, is because police and prosecutors refer cases back to be mediated at the local level. On the other hand, victims of domestic violence seem highly reluctant to engage with the formal justice process (JSMP, 2006b; 2005). For instance, in 2003 there were 179 domestic violence cases and 42 sexual violence cases reported to the Dili District Police, but 104 cases were dropped on the women’s initiative (De Sousa, 2005). The reasons for this reluctance as identified by the literature are numerous, including economic factors, family pressure, lack of information, and lack of protection and follow-up services for victims of domestic violence, while economic factors seem to be central to the considerations of many women. JSMP (2006b) found that among the women referred to their Victim Support Unit, those who chose not to pursue cases of gender-based and domestic violence in court, 50%
were influenced primarily by economic factors, 17% by pressure from their families, 17% by fear of the court process, 17% by a fear of separation or divorce, and 8% by pressure from the suspect.

**Referral of cases to the informal system**

While a recent report cites increasing awareness among National Police of Timor-Leste (PNTL) officers that domestic violence cases brought to them should not be referred to informal mechanisms (UNHCHR&UNMIT, 2010), in practice women who seek help from the police may be sent back to take their cases to the informal system and are persuaded to withdraw formal complaints (Rede Feto, 2009; Grenfell, 2009; Bere, 2005); less than a quarter of cases of gender-based violence reported to the police are sent to prosecution in the court system (Grenfell, 2009).

Some authors (e.g. Cummins, 2010) explain this by referring to a general distinction drawn by some police officers between what they call “small” and “big” cases. A JSMP (2005b) study found that while all interviewed police were aware that domestic violence is a crime and should be processed through the formal justice system, many nevertheless said they referred some “small cases” to the informal system. Only in cases where the violence caused serious injury did they take the case forward. This corresponds with Cummins’ (2010: 147) recent findings that police may officers consider lisan appropriate for “small problems” such as domestic violence, but inappropriate for “big problems” such as murder. She quotes a chief of police: “For a small problem, like a problem inside the house, when there is violence between husband and wife, [...] between parents and children, this we solve through the traditions we have [...]”. Swaine (2003) even reports that some cases in the past which reached the courts were similarly sent back to local justice mechanisms by judges and prosecutors.

Women therefore may not be reassured members of the formal system will always take their cases seriously. They may believe instead the violence they have experienced is not serious enough to be dealt with by the formal system (ADB, 2005; Swaine, 2003). In addition to that, once returning to informal justice mechanisms, women may be penalized for not bringing the problem to the attention of local leaders before approaching the formal system (OPE, 2007; Graydon, 2005). Some community leaders argue that a person who bypasses local law disrespects them as an authority and lisan in general. In order to demonstrate their unhappiness and encourage people to
use local law first, these community leaders demanded women who brought the case to the police pay an initial penalty before they would hear their case (Swaine, 2003; USAID, 2009).

Furthermore, PNTL officers are reported to use the maximum 72-hour detention period before charges must be laid as time for a victim to decide what they want to do about the case—to prosecute a perpetrator according to formal justice or to have him released (JSMP, 2005b; Bere, 2005). PNTL officers also seem to understand their role as a mediator in domestic violence cases (JSMP, 2005b; Graydon, 2005). Swaine (2003) explains how in some cases, police facilitate a joint statement between husband and wife in which the perpetrator would promise not to repeat his actions, including a clause that if he did, next time the police would use the statement as a basis for sending him to jail. In this context, women reported that while they did not necessarily want their husbands to go to jail and court, they instead wanted to use the police to scare their husbands and end the abuse suffered at home.

**Economic dependence**

The second major aspect impacting on women’s access to formal justice is widely recognized to relate to women’s economic dependency on their husbands. Both in urban and rural areas, the majority of Timorese women are reliant on their husbands for economic support for themselves and their immediate family (Swaine, 2003; Alves et al., 2009). As traditional gender roles in terms of division of labor persist, and women are most often the housewives and men the breadwinners in the family, their imprisonment would mean a loss of income for the whole family. The prospect of their husband being sent to prison when approaching the police may therefore deter many women from seeking justice through the formal system. Consequently, some women rather risk more violence than economic insecurity and often end up attempting to withdraw complaints, preferring to solve problems through local justice (Bye, 2005; JSMP, 2004; Bere, 2005).

The role of the victim’s family in providing economic support can therefore be central to a woman’s decision whether to approach formal justice or not. Yet, according to a recent survey, only one in five women have family members who could support her financially if she needed it (NDS et al., 2010). Women who live far away from their own family are at an even greater disadvantage. As Swaine (2003) points out, West Timorese women married in Timor-Leste are the most worrying cases, as the geographic and political
distance makes it difficult for them to contact families when in need of support. This problem is compounded by a country-wide lack of confidential and safe places for female victims of violence, particularly in rural areas, and the absence of any national social welfare system that would offer an alternative to such dependence. Women who are unable to return to their families therefore generally lack any alternative support system (Mearns, 2002; Bye, 2005). Bye (2005) therefore concludes that in order to guarantee access to justice for women victims, it is more important to focus on the woman's surviving abilities and on creating alternative income possibilities for the wife than only focusing on punishing the perpetrator.

Besides leaving women without economic support, punishing the perpetrator with imprisonment can have a number of negative side effects since imprisonment may not be considered an appropriate remedy by many Timorese. While a woman who reports her husband to the police is left at risk of abandonment and economic insecurity, the perpetrator on the other hand will have the “privilege” of receiving a free place to stay and free food in jail. Imprisonment may be seen as perverting the point of punishing the perpetrator (Graydon, 2005; USAID, 2009). Furthermore, a victim’s family might not be interested in the imprisonment of the perpetrator since this is likely to deny the family compensation they would receive through informal processes (Nixon, 2008). It is therefore not surprising that in cases of domestic violence only 43% believe the perpetrator should go to jail, while 37% think compensation is adequate. Younger, more educated East Timorese are much more likely to support jail for a man who hurts his wife, while older and less educated citizens believe compensation is preferable (The Asia Foundation, 2004).

Social pressure

While some women may prefer to take their cases to the informal system, others seem to be pressured by their families or local authority figures to resolve domestic violence cases by informal means, facing repercussions not only from their husbands, but also from their husband's family or their own family (The Asia Foundation, 2004; OPE, 2007; Cummins, 2010). Some administrators of local justice have been reported to instruct victims of domestic violence not to go to the police, penalizing those who bypass local justice, for instance by demanding a fine to be paid by those bypassing the informal system (Swaine, 2003; Graydon, 2005).
Since formal justice may entail a prison sentence for the offender, the formal system may be seen as a gateway to divorce, particularly since domestic violence is now a public crime. Local systems, on the other hand, generally aim at reconciling and keeping families together. Separation from a violent partner is usually not an option and women are not supported if they wish to divorce (OPE, 2007; ADB, 2005; Swaine, 2003; USAID, 2009). The influence of the Catholic church may also be relevant here as many victims of domestic violence who turn to priests or nuns for help receive the advice to be patient with their husbands and to serve them better in order not to provoke disputes (Dewi, 2002; Bye, 2005; USAID, 2004).

Yet, as pointed out above, the issue of marriage and divorce should not be viewed in simplistic terms. It is the marriage system that lies at the center of Timorese social networks, creating the basis for peaceful relations between families and a network of solidarity. In the context of the collectivist nature of Timorese society, the institution of marriage is respected above and beyond the individuals involved. The opposition of local systems towards separation of husband and wife must be understood within this wider context. It is therefore unclear whether women victims, while wanting the violence to stop, would in fact want to separate from their husbands, considering not only the social realities of Timorese society, but also economic pressures that women face when separating from their husband.

According to some authors (Hynes et al., 2004; JSMP, 2004), pressure on women not to approach formal justice seems to be closely related to the widespread belief that domestic problems should be solved and discussed only within the family. A majority of Timorese surveyed by the Asia Foundation (2004) considers domestic violence a “family matter” to be dealt with through the local lisan process; an assessment confirmed by a more recent survey, according to which Timorese prefer mediation processes remain in the realm of families and communities (The Asia Foundation, 2008). Since a woman’s marriage is part of the collective experience of maintaining relations between wife-giver (the family of the woman) and wife-taker (the family of the husband) groups, a married couple’s relationship and everything that happens within it is seen within the context of the two families’ relationships and that of the community as a whole. In this context, the experience of violence is not seen as an individual experience (Swaine, 2003).

As a result, and common reaction of women victims around the world, Timorese women often are reluctant to report a crime, feeling they should
not discuss the issue with people outside the family. The desire to protect the good name of their or the abuser’s family which may be seriously tarnished if a crime of domestic violence is made public and reported to the police (UNFPA, 2005; JSMP, 2005b; 2004) makes for a strong incentive to resolve a dispute in accordance with traditional justice using local values and reconcile with the perpetrator.13 This is especially true since, according to local beliefs, permitting one’s family name to be tarnished or failing to comply with established norms causes an imbalance in the social and ancestral order which could attract the wrath of the ancestors sanctioning individual transgressors, their families or even the entire community (Nixon, 2008; Trindade & Castro, 2007). Conflict and crime are communal problems which place community members at risk of supernatural sanctions. This explains communal pressures on disputing parties to resolve an issue expediently and harmoniously (Trindade & Castro, 2007; Mearns, 2002) and explains why domestic violence cases are often kept within the family (Rede Feto, 2009).

While the social reality in Timorese communities stipulates that reconciliation between husband and wife are of an utmost priority in order to maintain social networks, hardly any research has been concerned with the question how these social pressures could be applied to encourage men to halt abuse. There is thus a need for future research to investigate the dynamics of social pressure in more detail. In light of the need for individuals to maintain the social networks in which they are embedded, rendering divorce an often unfeasible solution to the problem of domestic violence, a more promising approach may be to utilize the existing social framework in order to increase positive pressures on men. For such an approach to be feasible, the dynamics, nature and forms of social pressure in cases of domestic violence need to be investigated further.

Perception of domestic violence

As described above, it is often not the victim’s decision whether to access the formal or informal justice system. The decision therefore strongly depends on how domestic violence is perceived within the community to which the victim belongs. In this regard, local justice administrators in a similar fashion as police often draw a distinction between what they define as “small” and “big” offences, with usually only the latter being referred to the police. While generally, big offences relate to disputes with a high potential for escalation and social unrest—such as murder or major land
disputes—domestic violence is considered a small problem and relatively normal (Chinn & Everett, 2008; Grenfell, 2009; Bye, 2005; Swaine, 2003). This means that there are actors at both the formal and informal level potentially working to minimize the number of domestic violence cases handled by the formal system creating a “double barrier” for women trying to access the formal justice system.

During consultations on the draft domestic violence law in Ainaro district, OPE (2007) found a generally high tolerance of the consequences of domestic violence. Incidents such as “loss or breaking of a part of a body” or “beating that result[s] in injury, swelling or sprain” were seen by some communities as only moderately severe. Only if the violence was continuously repeated or particularly severe, then the problem would be seen as big enough to be referred to police. Similarly, Cummins (2010) reports that often, the point at which an offence becomes “big” is described as when blood had been spilled.

These findings are supported by data from the Asia Foundation (2004; 2008). While in 2004 the majority of Timorese (75%) thought domestic violence was wrong, the 2008 survey showed a drastic change in attitude with only 34% believing that a man had no right to hit his wife. Interestingly, this view was shared by more women than men, while according to the 2004 survey, those most opposed to domestic violence were younger and educated women and residents of the Central region, Oecusse and Baucau. Those who are more likely to believe that domestic violence is acceptable are those over age 50, younger men, urbanites and those without any formal education. Over half the public (56%) felt that if a man beat his wife and seriously hurt her, the case should be addressed by the informal system. Just four in ten believed that such a case should be heard in the formal court. This attitude is reflected in the number of respondents who actually approached the police because of domestic violence—a mere 7% compared to 83% who approached their family or a local authority. This data suggests that domestic violence may not be perceived as an offence serious enough to be dealt with in the formal system.

While traditionally, lisan does not distinguish between civil and criminal matters but deals with both issues as required, some communities have started to apply these legal terms to lisan. Cummins (2010) describes how in some communities in Ainaro and Fatulia, a third category of offence has been created, referring to domestic violence as civil violence (violensia sivil).
The use of this term shows that domestic violence is viewed as having different qualities and is generally seen as less severe than other violence, leading to cases of domestic violence being resolved via lisan. Cummins (2010: 154-5) quotes one Chefe de Aldeia who explains that “regarding violence, criminal violence, we cannot adjudicate. That goes to the police. [But] if it is domestic violence, we resolve that within the Aldeia, via lisan.”

Because female victims often lack a voice, it is rarely the women themselves who decide whether an offence is “big enough” and should go to the police but rather her family or local authority figures (Cummins, 2010), while these actors may base their decision on what they perceive to be best for the whole community rather than the individual. Many women may not realize the abuse they experience is a crime, but may perceive it as a normal and unavoidable part of Timorese society, remaining silent and tolerating the abuse (Alves et al., 2009; JSMP, 2004; UNFPA, 2005). Considering violence in a domestic relationship as normal or even inevitable seems to be a common attitude in Timor-Leste and is reflected in the Tetum saying “bikan ho kanuru baku malu”, “a dish and a spoon will hit each other” (UNFPA, 2005).

In a male dominated society as Timor-Leste, this acceptance of violence by women and men means if a woman has not fulfilled her expected role as a housewife and mother, the man may feel he has a right to beat her—to educate her (Bye, 2005). Different surveys support this conclusion to varying degrees. The Demography and Health Survey of 2009 found that an astonishing 86% of women and 80% of men believe that a husband is justified in beating his wife for neglecting her duties such as burning the food, refusing to have intercourse with him, or neglecting the children (NSD et al., 2010). In another study, 51% of respondents strongly agreed that “a man has a good reason to hit his wife if she disobeys him” (JSMP, 2004), while a smaller number (21%), but nevertheless considerable minority, of those surveyed by the Asia Foundation (2008) feels that a man has the right to hit his wife if she misbehaves. Yet, only 34% disapprove of this statement while the highest number of respondents (44%) says it depends on each case individually. Violence may then be seen as an acceptable way of disciplining or educating wives or children (Alves, 2009; USAID, 2004).

Some literature affirms that a third of those who find domestic violence acceptable believe it is permissible due to the bride price which the man’s family has paid to the woman’s family (See The Asia Foundation, 2004). This terminology (“accept”, “believe”, “permissible”), however, is problematic
since it may carry different interpretations depending on the cultural context, especially when this interpretation does not use the legal framework definition of domestic violence as point of reference. Another study found that only 9% of women felt that the bride price had a negative influence on how their husband treated them while 38% stated that it had a positive effect (UNFPA, 2005). The belief that there is a direct relationship between the custom of paying a bride price and the increase in the incidence of domestic violence in Timor-Leste—a consistent theme which runs through the literature (Corcoran-Nantes, 2009; Rede Feto, 2009; Swaine, 2003; The Asia Foundation, 2004)—therefore cannot be proven and may represent an emotional and generalized interpretation of reality. More in-depth research is required before the effects of the bride price on domestic violence can be determined.

Authors such as Babo-Soares (2009) warn against interpreting the norms of the marriage system in purely economic terms. This author describes marriage as the main nucleus of Timorese social relationships, with two families or clans forming a socio-politic, economic and cultural alliance. In this context, the bride price is required to balance the woman's value based on her fertility and labor which flows from her family to the man's. Hohe and Nixon (2003) point out that the marriage system implies an exchange of goods rather than a one-sided payment. Speaking generally, while the man's family gives goods representing maleness and security such as cattle, buffaloes and money to the woman's family, they return goods representing femaleness and fertility, such as gold, weavings and pigs. The flow of values represented in the exchange of goods creates a socio-cosmic balance assuring families' fertility as well as security. It creates the basis for peaceful relations between the two families, establishing strong social linkages and a network of solidarity between two clans/families, representing a form of social safety net (Ospina, 2006; Alves, 2009; Mearns, 2002).

A disruption of these relations can have serious consequences for the entire community, making the relations between families a central concern for local administrators of justice. Retaining good relations between families may then be perceived as more important to the survival of the community than an individual's experience of violence. Under the full weight of commitments and bonds established between families with the bride price, women may seek to avoid “creating” problems by not seeking justice for
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crimes of violence (Alves et al., 2009). Considering the complex nature of the marriage system and its important role within communities, further research is required to determine the role of the bride price in creating barriers to women’s access to justice. It remains unclear in how far the payment of the bride price is in fact perceived as the “purchase” of a woman, and how socio-economic changes, urbanization, and raising amounts of bride prices are influencing this perception.

Accessibility and speed of the formal justice system

As many authors report, practical considerations such as a community’s distance to formal justice institutions, their cost and the speed of processing cases, also seem to play a big role when it comes to women’s access to justice. Few community members in rural Timor-Leste own mobile phones, and given the distance of many communities to the next police station, transport might not be available or unaffordable (Cummins, 2010; Swaine, 2003; JSMP, 2004; UNFPA, 2005). The lack of accessibility of formal legal institutions is confirmed by data of the Asia Foundation (2008) according to which 60% of respondents who have heard of a formal court before say they do not have a court house in close enough proximity to use if necessary. Without access to any support systems, this becomes a particular problem for women who generally have very limited financial means available to bring their cases to court (Rede Feto, 2009).

It is impossible to know how many “silent cases” exist in which the victims, but for these material constraints, would prefer to use the formal justice system (Cummins, 2010). Higher reporting rates in districts with courts suggest that when people have access to formal judicial institutions in close proximity they are more likely to utilize the formal justice system. The presence of Vulnerable Persons Unit (VPU) officers of PNTL has a similar effect on the number of reported cases which indicates that a strengthening of this unit at the sub-district level is likely to improve reporting behavior (UNHCHR&UNMIT, 2010).

Yet, even when victims do pursue their cases through the formal justice system, problems persist, in particular regarding the slow resolution of cases involving gender-based violence. It is often between six months and one year before such cases are finalized by the court which may cause women to drop their cases or may act as a deterrent to female victims seeking justice in the first place (World Bank, 2006; JSMP, 2005; 2006b).
While the formal legal system is generally perceived to be less accessible, more complex, and a greater financial risk than local justice mechanisms (The Asia Foundation, 2004), it is important to note that the cost involved in local justice processes can also prohibit women from using these mechanisms. For instance, in some areas, it is expected to bring betel nut and cigarettes for the lian nain presiding over the hearing. Also, in order to “close the shame” and reconcile, usually the guilty party will have to provide a meal, in some cases for the whole village. Even if the husband is found guilty, his wife as member of his household will end up equally bearing this significant financial burden and may thus be discouraged from seeking justice at all (Swaine, 2003).

**Lack of understanding regarding the formal system**

Female victims of violence often have little knowledge about legal processes, and are unlikely to understand many formal legal procedures, including how to bring their cases to the formal system (Rede Feto, 2009; JSMP, 2009; UNFPA, 2005). Particularly in rural Timor-Leste there is very low awareness regarding how to engage with actors of the formal legal system, with only 34% having heard of public prosecutors before, 41% of lawyers, and 59% of formal courts. As a result, 92% say they are more comfortable with local justice processes than the formal system (The Asia Foundation, 2004; 2008).

This lack of knowledge also extends to the substance of the law. While more than three-quarters of East Timorese understand that it is illegal for a man to beat his wife if he disapproves of her behavior, significant minorities remain unaware of these provisions. Education and geography are the most crucial factors. Younger, educated citizens have the best awareness of the law, as well as Dili residents while citizens in Oecusse and the Western regions are less aware of legal provisions. In 2004, the laws against domestic violence were most familiar in Baucau (82%) and the Central region (84%), but less so in the East (71%) and the West (69%) (The Asia Foundation, 2004). This lack of legal understanding is compounded by some misunderstandings by certain PNTL officers who do not fully or correctly inform women about procedures and entitlements under the formal system, instead sending cases back to the local system (Swaine, 2003).
V. Interaction Between Formal and Informal Justice Systems

Regarding popular attitudes towards the interaction of the two systems, Timorese seem to recognize a role for both state and non-state actors in the maintenance of law and order (World Bank, 2010), and communities often see no contradiction in seeking justice through both systems at the same time (JSMP, 2006; Trindade & Castro, 2007). Sometimes one system is approached and, if the response or outcome of the initial approach is considered unsatisfactory, then another will be approached (Wilson, 2010). East Timorese therefore clearly display a concept of justice which involves a continuum encompassing both the informal and the formal legal system, in which generally a division between “minor” offenses, to be dealt with locally, and “serious” issues, to be forwarded to the formal system, applies (The Asia Foundation, 2004). According to Swaine (2003), many women think that a forum shopping approach, i.e. engaging both systems in order to maximize their chances of success, is the most fruitful approach for them when seeking justice. While these women see the police as having more capacity than informal authorities to scare violent husbands into stopping their actions and compelling them to pay an agreed-upon compensation, having the matter resolved by informal means guarantees that the process is culturally and socially acceptable.

Lack of guidelines for interaction

While it may not be recognizable straight away, in practice there is a close relationship between formal and informal justice systems in Timor-Leste. First and foremost, this relates to the above described practice cases brought back to local justice processes and victims withdrawing formal charges to approach the informal system. The interaction between the police and formal courts on the one hand and local law on the other hand, however, extends far beyond that—yet mostly in an unregulated and ad hoc fashion.

For instance, a recent survey found that the vast majority of PNTL officers (85%) say they play a role in informal dispute resolution, as witnesses, observers or mediators, with domestic violence being the most common dispute dealt with (Chinn & Everett, 2008). Some VPU offices furthermore keep files with information about cases that had been resolved through traditional mechanisms. In one district it is common practice that if a victim
brings a signed peace agreement from a traditional proceeding to the police station within three days of having filed an official complaint, the police do not forward the case for judicial action, but instead files the agreement (UNHCHR & UNMIT, 2010).

In a similar fashion, formal courts are interacting with the informal system. Some district courts are making an effort to take into account elements of informal law, for instance the aspects of compensation and reconciliation (Grenfell, 2009). UNDP access to justice officers monitored one case of physical assault in Same in October 2010 which was closed by the judge after the parties presented a peace agreement stating that the case had been resolved using informal law. JSM (2006) reports that in the court cases they monitored, courts did take into account informal law while maintaining the supremacy of the formal system.

While this practice might increase the legitimacy of court decisions as perceived at the local level, Grenfell (2009) argues that this process is nevertheless problematic since it occurs in an ad hoc, unmonitored fashion and outside of the existing state legal framework. The two systems are therefore in fact highly interdependent but, as Graydon (2005: 68) describes it, “only through the improvised and unregulated decisions made by individuals”, creating confusion among the populace and creating a risk of double jeopardy. It is therefore argued that the current state of legal pluralism needs to be regulated as it is placing strain on both systems and causing confusion for locals (Grenfell, 2006).

Women in particular are suffering from this situation as they are sent back and forth between the two systems, or become the subjects of un-standardized processes (Swaine, 2003). In the absence of legislative guidelines, and in the context of limited state presence in rural areas, the balance between lisan and formal law tends to be negotiated by local authorities who may not always acknowledge the interests of non-elite community members, particularly those of domestic violence victims (Cummins, 2010). While the regulation of the interaction of formal and informal systems may therefore be desirable, too rigid regulation on the other hand may decrease women's options to “forum shop”, i.e. to use the most promising justice mechanism for their case. Any formal regulation must therefore be crafted carefully as to not in practice decrease the number of justice options available to women.
Experiences of other countries

Some countries, such as Samoa, have made attempts to formalize the relationship and interaction of formal and informal systems of justice. Since 1990, courts have been required to take village punishments into account in mitigation of court penalties. However, a determination of guilt or innocence by an informal court does not bar action by a state court in relation to the same behavior. Similarly, the formal acceptance of the customary ritualized public apology, “Ifoga”, does not preclude a civil action for damages under common law (UNICEF, 2009).

In other contexts, attempts at defining the relationship between formal and informal law have not succeeded in changing the situation on the ground. In Sudan, for instance, attempts were made to define subject matter jurisdiction, but to no avail. Instead, individual chiefs in urban areas adhere to formal regulations only when it suits them while in rural areas jurisdiction on all subjects remains squarely in the hands of the local chief even where the government has established jurisdictional guidelines. This means that cases of gender-based violence are handled almost exclusively at the local level while jurisdictional uncertainty remains a barrier to the administration of justice in cases of gender-based violence (UNFPA, 2008). The same phenomenon was observed among in Liberia during efforts to remove serious cases, such as murder, out of Chiefs’ jurisdiction; instead, Chiefs went “underground”, continuing to hear serious cases to safeguard their legitimacy in the community (Isser et al., 2009).

Similar problems have been encountered in Papua New Guinea, where a village court system has been established, a hybrid institution that draws upon the authority of both state justice and informal justice. Village courts are created by the state, have jurisdictional powers established under statute, and, in theory, are subject to review by formal state courts. At the same time they are presided over by village leaders and are supposed to resolve disputes in accordance with local custom (UNICEF, 2009). Yet, the village courts are regularly criticized for discriminating against women litigants and victims of crime, reflecting both the failure of formal state courts to properly supervise the village courts and the intrinsic deficiency of the village court model (UNICEF, 2009). More interestingly perhaps, Papua New Guinea has also taken steps to incorporate aspects of informal law into formal law. For instance, the Criminal Law (Compensation) Act of 1991 allows victims of crimes such as domestic violence to claim compensation from the perpe-
Just as in Timor-Leste, claiming compensation for wrongdoing is a common feature of local law in Papua New Guinea (United Nations, 2010).

Positive international examples are reported in cases where rather than focusing exclusively on the accessibility of the formal legal system, culture and tradition were used to improve the situation of women. Studies on women’s access to land rights in Kenya (Harrington & Chopra, 2010; Chopra, 2007; Nyong’o & Ongalo, 2005) have found that the most effective way of tackling local power structures which disadvantage women is by actually working *with* the existent socio-cultural value systems—which are legitimate, acceptable and understood in that community—instead of promoting the formal justice system at the expense of, and despite, the informal system. By supporting and re-emphasizing existing positive values, the support of community leaders and the community at large was gained for initiatives in support of women’s rights. Elders were thereby able to intervene successfully and secure women’s rights to access land. Locally acceptable initiatives seeking changes were achieved while official rights gained traction, local legitimacy and long-term acceptance since they were attached to existing community values and practices.

**VI. Conclusions and Research Implications**

Handling cases of domestic violence is proving difficult for both state and informal justice in Timor-Leste. The police system, though only recently charged with upholding the Law against domestic violence, requires additional institutional and individual capacity building to better understand and address complex social phenomena. Without continued capacity building, approaching the police for assistance may prove a negative and disempowering experience for many victims of domestic violence. Local justice processes, on the other hand, may likewise disadvantage and disempower women in cases of domestic violence, as both users of and potential administrators of justice. With actors in both the formal and informal justice system at times working to prevent cases of domestic violence being processed formally, women attempting to access the formal justice system face serious barriers. Police and local authorities display a need for increased understanding of the seriousness of domestic violence as established by the State and the impact this violence can have on women and the wider community.
Building the capacity of the formal system is a long term process. Considering their integral role in local culture, local informal systems will remain a central feature of conflict resolution regardless of the completion of this process, providing Timorese citizens with a culturally accessible alternative to the formal justice system. Being tied up in a set of spiritual beliefs and social norms, local justice systems are fulfilling a purpose the formal system cannot simply replace. It is therefore of crucial importance to engage with these systems and understand the cultural values underpinning various practices and beliefs.

While most of the literature points out that local justice at times runs counter to ideas of equality and international human rights standards, less attention is given to the fact that local law and its focus on collective rights, rather than individual rights, serves a crucial social function: maintaining peace and social order within small, close-knit communities. For any reforms to be acceptable in at the local level, there is a need to make local justice systems “work” for women while maintaining the principles and values which underpin them. Informal systems’ focus on collective rights should be understood as an opportunity rather than an obstacle. The Kenyan experience noted above indicates measures to increase women’s access to justice which make use of local social systems, rather than seeking to supplant them through a dogmatic rights-based programme, are most likely to succeed and be sustainable. Considering the importance of customary law and the values embodied therein for Timorese communities, this conclusion has important implications in Timor-Leste.

That said, those seeking change in Timorese communities may not face insurmountable opposition. According to the Asia Foundation (2004), 75% of Timorese acknowledge that lisan could do with some reform while Swaine (2003) found that local holders of justice interviewed for her study were open to and eager for such reformation to take place—as long as it is respectful to their beliefs, and based on an inclusive and open process. Supporting positive changes within local systems while maintaining overall their integrity is likely to be the most successful and desirable approach.

A purely legal approach will almost certainly prove insufficient to change outlooks and deeply rooted behavior. While a necessary factor in social change, law alone often is not sufficient as an agent of social change, particularly in the context of Timor-Leste, where the sequential UN missions deployed to Timor-Leste and the international community have pro-
moted (and continue to promote) a number of laws which do not adequately account for the socio-cultural context over the years.

It is the concept of and attitude toward violence against women, the idea that domestic violence is a normal occurrence and private matter and general ignorance of the domestic legal framework, which need to be addressed and challenged. Further, due to women’s high level of economic dependence on their husbands, focusing on punishing the perpetrator will prove insufficient to guarantee access to justice for female victims—and may actually undermine local social mechanisms which support women and deter domestic violence. It may therefore be more beneficial to focus on women’s surviving abilities and alternative income possibilities as well as supporting change within local systems.

The unpredictable interaction of the local and state legal systems is compounding existing problems and is inhibiting the development of a secure and supportive environment for women seeking justice in cases of domestic violence. A formalization of this relationship which advances the positive aspects of both systems is therefore crucial. For instance, incorporating aspects of local justice, such as compensation for a crime, into the formal system might increase the legitimacy of formal justice rulings and punishments at the local level. Similarly, clear guidelines on how formal courts should deal with informal decisions are needed in order to remedy the current situation of legal uncertainty.

Research Implications

As pointed out throughout the paper, there are a number of gaps in the literature which compartmentalize the understanding of the problem of domestic violence in Timor-Leste.

1. **There is only partially reliable data on domestic violence available, whether quantitative or qualitative.** With data collection and terminology inconsistent across studies and definitions of domestic violence not matching the definition in the Law against domestic violence, it remains impossible to map the incidence of domestic violence and to track changes accurately, and to identify the most vulnerable groups of women.

2. **Local dispute resolution trajectories in cases of domestic violence are often simplified and homogenized.** While the majority of the literature acknowledges the diversity of local dispute resolution mechanisms
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Across Timor-Leste, ideas on concrete trajectories dominant in different areas, both urban and rural, remain blurred. Questions such as which family or community authority is approached, how the payment of compensation is administered, or how much of a voice women receive in local dispute resolution need to be investigated further in order to map different dispute trajectories across Timor-Leste.

3. There is a need to analyze the dynamics and power relation between authorities in local justice processes—including ritual, political and formal state justice authorities—while taking into account the diversity of local systems in Timor-Leste. It is unclear how far decision-making power has shifted from the lian nain to the Chefe de Suco and Chefe de Aldeia and in how far ritual authorities are still able to influence or control local justice processes, particularly in light of socio-economic changes such as urbanization. The significance of other involved actors, such as the Catholic Church, the dato or the liurai also requires further research since the role of these actors has rarely been explored even though they may have a considerable influence on the outcomes of informal justice. The same concerns the role of police officers in mediation. While Chinn and Everett (2008) found the majority of police say they help mediate conflicts such as domestic violence at the community level, it remains unclear what exact role police play, at which stage of a mediation process they become involved, and whether they have any decision-making capacity regarding local disputes.

4. The major barriers to women's access to justice need to be identified, among them most importantly the choice of justice institutions, i.e. formal or informal institutions, and the nature and impact of social pressures. While the literature identifies a number of barriers to women's access to justice, it remains unclear which the decisive ones are. While women's economic dependence on their husbands seems to be a central deterrent for women to seek justice, the significance of other factors such as social pressure, or the lack of understanding of the formal system remain hard to determine. For instance, if the formal system were more accessible, would victims of domestic violence actually take advantage of it? In order for successful measures to improve women's access to justice to be designed, such questions need to be addressed and answered by future research.

Moreover, the reasons why either the formal or the informal system becomes a choice for remedy need to be analyzed further with more qualitative and quantitative data and a focus on how formal law is being applied in
practice. Since it is the definition of the concepts of violence and crime and the related distinction between small and big offences which seems central to the question whether formal or informal justice is considered appropriate, it is crucial to further explore local definitions of violence. In relation to this, it is important to not only focus on the question of what it is that keeps women from reporting to the police, but to focus on the victim’s family’s interests. As it is often the family’s decision which route to choose, family heads and lian nain become crucial figures in domestic violence cases. It is therefore necessary to examine further what it is that stimulates families to contact either the police or the local leader.

Finally, the nature and impact of social pressures need to be taken into account when analyzing the barriers to women’s access to justice. While the literature emphasizes the role of social pressure in influencing the choices made by victims of domestic violence, it is unclear why these apparently strong social pressures are more effective in some than in other cases. Considering the importance of reconciliation in order to restore harmony both in the material and cosmic spheres, it remains unclear why the social pressure generated seemingly is not always enough to compel perpetrators to pay the agreed upon compensation. Most importantly, there is a need to investigate whether and how social pressures could be used to pressure men to stop abuse. Related to this question is the issue of the bride price. Future research should investigate how far the meaning of the bride price has changed in light of socio-economic developments and how far the payment of the bride price creates pressures on women not to seek justice for crimes of domestic violence.

5. Local law and culture are frequently analyzed from a formal legal perspective, missing local realities and opportunities of working within those realities and driving change from the bottom-up. Timorese informal law can at times be discriminatory towards women; however, much of the literature on Timor-Leste tends to draw overly simplistic conclusions advocating the replacement of informal law, if not outright elimination. This literature review shows that local conceptualizations of domestic violence and local value systems do not necessarily correspond with the prescriptions of the 2010 Law against domestic violence. Positivist change from the top down, as often advocated by the various UN missions and international community in Timor-Leste, is unlikely to improve women’s access to justice on the ground; it may be a necessary component, but not a sufficient one.
Policies aiming to supplant and replace informal justice with formal laws and institutions are misguided; they are neither realistic and nor are they desirable given the importance of informal justice as an integral component of Timorese cultures—not to mention protected as such under international human rights law. Improving access to justice requires a more nuanced and circumspect approach, combining concern and respect for human rights with understanding and respect for local cultural systems given the central role they play in Timorese society. To be effective and legitimate, change should come from the bottom up—rooted in cultural values and practices. There is a need for further research and policy focusing on strengthening values within informal law which protect and promote women’s rights (and broader human rights in general) to help bring about locally-owned change.

Endnotes

1 Many writers use the terms “customary” or “traditional” law to refer to localized, informal justice mechanisms in Timor-Leste. Without attempting to be exhaustive regarding the definition of local practices, this literature review will instead use the terms “informal” or “local” justice. As pointed out by various authors (Mearns, 2002; Swaine, 2003; Hohe, 2003; Butt et al., 2009), the terms “customary” or “traditional” law may imply a timeless and fixed notion of tradition and custom that is opposed to an evolving, universal and “modern” system of formal law. As a result, these terms do not account for the ways in which external forces or internal social dynamics are continuously changing traditions and customs. Using the terms informal and local law, this literature review aims to take account of the highly dynamic and fluid nature of local practices.

2 It should be noted that the quoted study only asked those respondents who were aware of the existence of formal courts (59% of respondents) to answer this question.

3 The law defines “family” in quite a broad manner as well: Article 3 Family: “For the purposes of this law, members of a family shall refer to people in the following family relationships: a) Spouses or ex-spouses; b) Persons who live or have lived under conditions analogous to spouses, even though without cohabitation; c) Relatives in the ascending and descending line of one or both spouses or of anyone in the situation referred to in the preceding paragraph, as long as they are the same relationship of dependency and part of the household economy; d) Any other person who is part of the same context of dependency or household economy, including any person who carries out an activity in the household continuously and with a subordinated status.”

4 Much of the literature does not define the term “domestic violence” at all. Some authors refer to specific definitions of domestic violence such as Bye (2005: 18) who defines domestic violence as “physical, sexual, and psychological violence
occurring in the family”, while much of the literature refers to broad definitions of gender-based violence (GBV), see e.g. Myrttinen et. al (2010: 14) and Swaine (2003: 12) who refer to GBV as “a broad term for any harm that is perpetrated against a person's will, that has a negative impact on the physical or psychological health, development, and the identity of the person, and that is the result of gendered power inequities that exploit distinctions between males and females, and among males and females.”

5 The Vulnerable Persons Unit (VPU) was created in 2001 by UNPOL and the National Police of Timor-Leste (PNTL) and has jurisdiction over the following crimes: rape, attempted rape, domestic violence, child abuse, child neglect, missing persons, and sexual harassment (JSMP, 2004; Styles-Power et al., 2008).

6 UNTAET Regulation 1/1999 provided that the laws that applied in East Timor prior to 25 October 1999 shall apply in East Timor in so far as they do not conflict with the standards referred to in Section 2 regarding conformity with human rights standards and section 3 repealing particular Indonesian laws. This was widely understood to allow for the continued application of particular Indonesian laws. Article 165 of the RDTL Constitution concerning the applicability of previous laws and RDTL law 2/2002 On the Interpretation of Applicable Law was also widely understood to have maintained this situation post-independence.

7 It is unclear how often it was used between 2006-2009 given the gap in research data.

8 Article 154 Mistreatment of a spouse: “Any person who inflicts physical or mental mistreatment or cruel treatment upon a spouse or person cohabiting with the perpetrator in a situation analogous to that of spouse is punishable with 2 to 6 years imprisonment, if no heavier penalty is applicable by force of another legal provision” (DRTL, 2009b).

9 The Mobile Court hearing in Same on 29 October 2010 was monitored by a UNDP Access to Justice Officer.

10 61% of respondents of the same survey said they had heard of a formal court before.

11 Lisan is a broad term encompassing local law, social norms and morality, art and rituals, and a system of community leadership and governance.

12 West Timorese come from Nusa Tenggara Timur Province in Indonesia. This province is also known as West Timor.

13 It should be noted that this is by no means a phenomenon unique to Timor-Leste; however this section details how this universal phenomenon is manifested specifically in Timor-Leste.

14 The literature often refers to the bride price using the Tetum term “barlake” (See e.g. OPE, 2007; Rede Feto, 2009). Yet, barlake is a broad concept with varied meanings across Timor-Leste and goes beyond the mere payment of the bride price, representing a key element in defining the relation between the wife’s and husband’s families (Myrttinen et al., 2010). This literature review therefore uses the term “bride price”.

15 This statement is based on data collected by UNMIT’s Human Rights and Transitional Justice Section, yet, the report does not specify whether reporting rates
are on a per capita basis or based on raw numbers. In the latter case, higher reporting rates could simply be explained by a higher population in districts with courts.

16 This conclusion is supported by a number of international examples. For instance, while South Africa boasts the African continent’s most progressive legal protection of women’s rights (Ozoemena & Hansungule, 2009) and regulates the reform of customary law through its Traditional Leadership and Governance Framework Act that promotes equality and the installation of female traditional leaders, in practice, women have not benefited substantially from these prescriptions (Curran & Bonthuys, 2004).

References


The perceived contradiction between human rights and local cultures is unfortunately misplaced, and constitutes a major obstacle to the understanding of human rights in formal and non-formal educational settings. While there are areas of conflict between the internationally defined human rights and local cultures, there are also many areas of convergence between the two.

This problematic perception is traceable to the inadequate understanding of human rights as well as the lack of information on the process of international human rights standards setting.

It could have also resulted from the statements of some Asian governments and their leaders in the 1990s that promoted human rights as non-Asian concept.

The projection of human rights as imposition of foreign culture reached an alarming level in Asia in the 1990s, while some communities in the Pacific expressed reservation on human rights due to differences with their cultural practices.

However, the Asia-Pacific region has sufficient historical and cultural resources to counter these views. These resources are important in ensuring proper understanding and practice of human rights.

The Issue

Prior to the World Conference on Human Rights in 1993, national and international media had been giving much space to a “debate” on whether or not “Asian values” existed. The “debate” pitted political leaders in a number of countries in Asia against each other. On one side, a group of prominent leaders particularly the then Singaporean Prime Minister Lee Kuan Yew, the then Malaysian Prime Minister Mahathir Mohammad, and supported by the then Indonesian President Soeharto, argued on the existence of a set of so-called “Asian values” that were distinguishable from the so-called “Western values”.'
Another group of prominent leaders argued on the opposite side, namely, South Korea's then political leader Kim Dae Jung, the Philippines' former President Corazon C. Aquino and then Philippine President Fidel Ramos, and Burma's political leader Aung Sang Suu Kyi. The debate covered economics, politics, social behavior and human rights.

The “Asian values” proponents by and large support an authoritarian form of government as a necessity to maintain peace, harmony and prosperity. As a consequence, rights and freedoms seen as individual entitlements ought to give way to the welfare of the “majority.”

One scholar explains that the “Asian values” idea can be sourced from the Singaporean situation, a “city-state with a Eurasian culture and ethnically mixed Asian (but predominantly Chinese) population.” According to the scholar,2

Singapore has a genuine need to formulate some value consensus among diverse—and potentially divisive—ethnic and religious groups that will serve as a common denominator for public morality, for civil conduct of affairs, and for the work ethic that is needed to sustain high level of economic growth.

But this objective is premised on a “prime belief in ruling circles that only strong, steady leadership can keep communal peace, and that authoritarian government, providing firm policy direction and social stability, is the necessary condition for continued economic growth.”3

The idea promoted by Singaporean leaders at least during the late 1980s and the 1990s was hardly unique in Southeast Asia. During the late-1950s-1970s period, Sukarno implemented (and continued by Soeharto) the “guided democracy” principle in Indonesia while the Philippines’ Ferdinand Marcos imposed “constitutional authoritarianism” on the country. The military-ruled governments in Thailand and Burma, in the 1970s, would probably be of the same type. They all stressed the need for strong government, disciplined citizenry (meaning people obedient to government orders), role of the military, and development. These ideas are variations of national security state concept with a supposed national development agenda.

The experience of economic growth under authoritarian rule in South Korea and Taiwan provided support for this view in the eyes of these Southeast Asian authoritarian political leaders.
Sustained economic growth supported by an authoritarian government seems to be one of the key ideas underpinning the “Asian values” argument.\textsuperscript{4} In effect, ideas that would not support an authoritarian form of government should be temporarily set aside, or ignored for being non-Asian concepts. From this perspective, the idea of universality of human rights qualifies as such non-Asian concept.

The debate generated so much heat that there was fear that the Regional Meeting for Asia of the World Conference on Human Rights being held in Bangkok in March 1993 would result in a formal declaration of “non-universality” of human rights. The representatives of non-governmental organizations, holding a parallel meeting, saw not simply an economic basis for the “Asian values” stance but outright attempt to restrict human rights. They were prompted to state in the intergovernmental meeting that\textsuperscript{5}

> [A]ny suggestion that the human rights embodied in the existing instruments such as the International Covenants on Human Rights are not applicable [to] the Asian context must be resolutely rejected. We reject the position of divisibility of human rights used in an attempt to negate the universality of these rights.

This argument is ... used ... to deny civil and political rights by enforcing measures which are claimed to be necessary for national or internal security or peace and order, for deterrence against “terrorist” activities or to justify discrimination against women, indigenous peoples and other marginalized social groups.

States have the responsibility to harmonize national approaches with universal standards of fundamental human rights.

The Asian governments agreed in Article 8 of its Bangkok Declaration\textsuperscript{6} to:

8. Recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.

It is important to note in this statement not the reiteration of universality principle but the strong qualification in the application of the principle.
The provision, in requiring the consideration of the “context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds,” echoed a relativist approach to human rights. This gave rise to several questions: How would “national and regional peculiarities” and “historical, cultural and religious backgrounds” be considered in dealing with human rights? Could this approach in applying human rights lead to weaker subscription to the international human rights standards by governments, as feared by the non-governmental organizations?

Three months later, the United Nations World Conference on Human Rights (Vienna Conference) held in Vienna, Austria adopted on 25 June 1993 the Vienna Declaration and Programme of Action (VDPA). It provides among others the following: (Article 5)

5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

While Article 5 of the VDPA drew inspiration from Article 8 of the Bangkok Declaration, textual analysis reveals a difference between the two provisions. Article 5 of the VDPA clearly and strongly emphasizes that States must perform their “duty” to promote and protect human rights “regardless of their political, economic and cultural systems.” Article 8 of the Bangkok Declaration emphasizes the peculiarities and diverse backgrounds of States that must be considered in dealing with human rights.

Article 5 of the VDPA asserts the primacy of state obligation to protect, promote and realize human rights. Article 8 of the Bangkok Declaration asserts the primacy of the context within which that state obligation must operate.

This is not a minor difference in the context of the “Asian values” debate, which basically lowers commitment to fulfillment of human rights obligations of States in the name of culture and other peculiarities, or for the sake
of economic development/growth. Article 8 of the Bangkok Declaration does not conflict with the “Asian values” perspective.

The 1993 VDPA settled the issue of universality of human rights, including their “universal” implementation. And the member-states of the United Nations were expected to faithfully implement the VDPA from 1993 onward.

The 1993 Joint Communiqué of the Foreign Ministers of six Association of the Southeast Asian Nations (ASEAN) member-states issued immediately after the adoption of VDPA set the alarm early on about the full compliance with the VDPA commitments. The human rights section of the Joint Communiqué states, among others, the following:7

They stressed that human rights are interrelated and indivisible comprising civil, political, economic, social and cultural rights. These rights are of equal importance. They should be addressed in a balanced and integrated manner and protected and promoted with due regard for specific cultural, social, economic and political circumstances. They emphasized that the promotion and protection of human rights should not be politicized.

The word “universality” does not appear in describing human rights and the “duty of States, regardless” clause of the VDPA is missing. There is a strong hint in this Joint Communiqué about the insistence of some Asian governments on the original stance made on the issue embodied in the Bangkok Declaration, rather than on the “international consensus” on human rights expressed in VDPA. This Joint Communiqué provides a basis for thinking that this stance would probably define the actions of Asian states in Southeast Asia regarding protection and realization of human rights.

There is a certain irony in this situation considering that this Joint Communiqué is meant to report on the commitment of the ASEAN states involved in fulfilling the provisions of the VDPA.

The 2007 “Ministerial Meeting on Human Rights and Cultural Diversity” of the Non-Aligned Movement (NAM) provides another example of government ambivalence in adhering to the “duty of States, regardless” clause of Article 5 of the VDPA. The meeting, attended by many Asian member-states,9 adopted the 2007 Tehran Declaration and Programme of Action on Human Rights and Cultural Diversity. The declaration cites Article 5 of the
VDPA in full in its preamble, not in its operative paragraphs. And includes Article 4 in its operative paragraphs that provides:¹⁰

4. Recognized the significance of national and regional particularities and various historical, cultural and religious backgrounds and urged all actors on the international scene to contribute to the building of international order based on inclusion, justice, equality and equity, human dignity, mutual understanding and promotion of, and respect for cultural diversity and universal human rights;

This statement strongly resembles Article 8 of the Bangkok Declaration and continues to an extent the pre-eminence of the cultural and other particularities and backgrounds in considering human rights.

While the Tehran Declaration and Programme of Action correctly emphasizes the right to culture (or cultural diversity), it could have been more explicit in reiterating in its operative paragraphs the “duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms” declared by the VDPA.

Thus the question is: When Asian states adopt their own regional or subregional human rights-related agreements do they adhere closely to VDPA, including the universality provision?

In 2002, the member-states of the South Asian Association for Regional Cooperation (SAARC) ratified two regional conventions regarding the rights of women and children. In 2004, six Mekong states¹¹ signed, under the Coordinated Mekong Ministerial Initiative Against Human Trafficking (COMMIT Process), a memorandum of agreement (MOU) on combating human trafficking. Respect for the human rights of the trafficking victims is a key feature of this MOU (see Taylor and Sullivan on pages 58 to 59 of this publication).

In 2007, the Association of the Southeast Asian Nations (ASEAN) adopted the ASEAN Charter that laid the foundation for the creation of a rules-based ASEAN Community, and provided as one its principles the “respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice.” The charter led to the adoption in 2009 of the ASEAN Political-Security Community Blueprint with provisions on human rights and their mechanisms.¹²
While the adoption of these human rights or human rights-related sub-regional agreements belies the supposed imposition of foreign ideas in the region, their implementation with full support for the universality of human rights is still to be seen.

The 2011 resolution of the UN General Assembly on “The universal, indivisible, interrelated, interdependent and mutually reinforcing nature of all human rights and fundamental freedoms”\textsuperscript{13} provides an appropriate reiteration of Article 5 of the \textit{vdpA}. The resolution provides the following relevant statements:

1. Reaffirms that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights, civil, political, economic, social and cultural rights must be treated in a fair and equal manner, on the same footing and with the same emphasis;

6. Encourages States to take into account the universal, indivisible, interrelated, interdependent and mutually reinforcing nature of all human rights when integrating the promotion and protection of all human rights into relevant national policies and when promoting international cooperation in the field of human rights, while recalling that the primary responsibility for promoting and protecting human rights rests with the State.

This resolution should at least be a guide in any restatement of Article 5 of the \textit{vdpA} at the regional and subregional levels.\textsuperscript{14}

\textbf{Context of the Debate}\textsuperscript{15}

The Asian efforts on linking cultures and human rights have particular contexts. These historical contexts largely played a role in debunking the so-called conflict between “Asian values” and human rights. It is necessary to recall in a summarized form the efforts at discussing human rights in a contextualized sense, that is in the context of Asia, and yet upholding the universality principle.

Much of the support for the harmonization of human rights principles with the values and cultures in Asia come from people who underwent historic evolution in their respective political systems. They are the people in
South Korea and Taiwan in Northeast Asia; Indonesia, the Philippines and Thailand in Southeast Asia; and India and Nepal in South Asia.

Repression to regeneration

People who experienced authoritarian rule in the decade of the 1970s (some date back to the 1960s) also experienced a pattern of repression, reform, reflection and regeneration.

The authoritarian governments in these countries brought about massive human rights violations in all forms—arbitrary detention, torture, disappearances, extra-judicial killings, media repression, prohibition of public assemblies, restriction of movement for some people, among others. Most governments justified the authoritarian rule as necessary for national security, indirectly saying that human rights had to be sacrificed for the benefit of the state. But the people knew that the national security justification was a façade for the continued rule by the then government leaders. They saw the human rights violations as mere attempts at stifling dissent, no matter how reasonable the dissent was. Thus the era of repression pervaded in many parts of Asia, largely abetted by the Cold War.

Since the people could see the hypocrisy of the rulers, they did not succumb to the repression. They persisted, using various creative means, in defending the victims of repression, in protecting the general populace from further control and repression, and in bringing the human rights issues out to the international community. These people, consisting of lawyers, professors, social activists, religious workers, students, workers and members of marginalized groups were advocates of democracy, human rights or justice in general. In many cases they were also the human rights violations victims. In some cases, appeals for support from the international community were premised on the call for international solidarity with human rights violations victims.

As the structure of repression and authoritarian rule slowly unraveled in the decades of the 1980s and 1990s, more and more people gained the courage to call for justice. As history shows, several authoritarian governments fell one after the other.

With the change in the political arena coming quite fast, the establishment of democratic governments became a challenge as much as a source of hope (in many cases the cause of unreasonably high expectations of change).
And who else would be in the best position to help bring this about but the very people who risked their lives for democracy and justice.

Thus the period of reform came about. Changes in the political structure brought free and open elections, human rights policies and institutions, systems of accountability, and even people’s participation in governance. Those who figured well in the opposition to the authoritarian governments were given the chance to put into practice what they sacrificed for. At different times, the adoption of human rights policies and institutions came about due to their presence in the government to the applause of the people and the international community.

But making the system work is a totally different matter. While imbued with the best of intentions, the new system had to work on a hit-and-miss basis. The unreasonably high expectations of the public brought by change of government were not completely met. Human rights, while formally respected by the governments, continued to be violated nevertheless.

If the goals of achieving full democracy and respect for human rights remained, a review of the experiences had to be done. This was the period of reflection. Were things working in the way they were meant to be? Had there been a total rejection of the authoritarian ways of governance, or did they simply mutate into more subtle forms? Was the attitude of those who held power—from the bureaucrats to the members of the police and military—changed toward democratic governance and full respect for human rights? Did the people who came to power maintain their adherence to democratic principles or to human rights, or did they themselves become autocrats and human rights violators? There were many questions that should be raised in the transition from repressive situation to a system of governance guided by principles of justice.16

The call to recognize women’s rights as human rights formed part of this problem. Did we really mean full democracy, and all human rights for all? Did we really treat all sectors of society equally and fairly?

The stage for regeneration started with the efforts toward inclusiveness in terms of human rights advocacy. New issues were as important as the older human rights issues of political repression. Systems review required respect for the rights not only of the “men heroes” but also of the “women victims”17 of human rights violations and of the indigenous peoples, persons with disabilities, people living with HIV/AIDS, sexual minorities, religious minorities, foreign residents, and so many other sectors of society that pre-
viously did not matter in human rights debates and advocacy. If the system was meant to be respectful of all human rights for all, then a new round of systems change had to occur.

Broadening conceptualization

The main message of human rights was change. This was raised in the 1970s in response to the repressive governments, and still being raised at present in view of the broadening scope of human rights. Human rights were seen, then and now, as solutions to the many problems of government, people and society as a whole. At the time when authoritarian governments had strong grip of the society, some people had only human rights as the reason for appealing for international help. Lacking ratification of international human rights instruments, they could at least use the Universal Declaration of Human Rights (UDHR) as basis for pleas to the international institutions and governments to help stop human rights violations, or to exhort people to assert their rights.18

But human rights had to be applied in concrete contexts. In the 1980s, there were initiatives at relating the then existing problems to human rights both in terms of formal declarations and field practice. This was the period of confluence. The 1983 Declaration of the Basic Duties of ASEAN Peoples and Governments19 drawn up by mainly law-oriented groups in Southeast Asia reflects to a large extent the human rights problems at the time as well as the reiteration of the international human rights standards in the context of Southeast Asia in the early 1980s.20 The Declaration called for a stop to arbitrary detention, torture, and all forms of repression; people-centered development; people’s participation in governance and in their own community affairs; and government accountability for human rights violations.

The phase of conceptualization followed in the 1990s.21 Human rights were “evolving” as new sections of society were given recognition as deserving of having their own rights properly recognized and respected. Thus the concept of the rights of the indigenous peoples, persons with disabilities, people living with HIV/AIDS, sexual minorities, religious minorities, foreign residents, and so many other sectors of people further refined human rights beyond the traditional civil-political-rights and economic-social-cultural-rights categories. Human rights were seen as inclusive, not merely universal, more than before in order to emphasize that people had differences yet they all are equal in rights. Conceptualizing human rights meant redefining,
reinterpreting human rights in light of new situations, new awareness, and new assertions.

Conceptualization of human rights is indeed a necessity since the world has ended the Cold War period that affected the view on human rights concepts during the years that followed from 1946. This conceptualization, however, does not refer to reconceptualization that advocates of the “Asian Values” would like to do. Instead, this refers to the refinement of the specific human rights as applied to specific peoples, issues and contexts, yet still subscribing to the international human rights standards.

The authoritarian period in Asia of the 1970s and 1980s likewise hindered the discussions on human rights from a more inclusive perspective since political repression was the more dominant concern. When persons with disabilities now say “Nothing About Us Without Us” there is a restatement, or even strengthening, of an “old” inclusive human rights principle to address the current context.

Whose Universality?

Proponents of “Asian Values” argue that human rights are Western European and Northern American ideas and therefore unfit for Asian peoples whose cultural, economic, social and political systems are different. But this view ignores the historical development of human rights as international standards, and thus confuses Western European and Northern American views with the post second world war views on human rights. What we now consider “universal” human rights refer to those that went through international processes of vigorous discussions and formal decisions to adopt human rights concepts. The international human rights standards did not arise automatically from Western European (and also Northern American) ideas since their own old perceptions of human rights or similar rights were not meant to be universal. One author explains this point clearly:22

[T]he human rights of the first period (pre-1948 Universal Declaration of Human Rights) as they developed in Europe were by no means designed to be universal: there was to be no gradual expansion to include women and human beings of all races. Thus, it was only logical that the first initiative in international law towards international recognition of an equality of human beings that transcended the bounds of the white race did not come from the West. This is a historic fact that finds no mention
whatsoever in the usual Western publications on the “universal-
ity of human rights”. Instead of duly recognizing what was in this
respect an historic role played by Japan directly after the First
World War, global assertions are made that it is restraining itself
in participating in international platforms of human rights. But
it was in Japan where the first ever “League for the Abolition
of Racial Discrimination” was established immediately after the
First World War. It was a Japanese diplomat who proposed at the
Paris Peace Conference of 1918 that the principle of equality be
included in the covenant of the League of Nations...” [which was
not approved by major Western representatives such as then
United States President Woodrow Wilson].

The universal human rights of the second period (after 1948
Universal Declaration of Human Rights) are as new for the West
as they are for China. Less than 50 years have passed since both
cultural spheres were confronted with such a universal concep-
tion for the first time. Indeed, the image of the human being
underlying even the present-day concept of human rights—es-
pecially in the liberal-democratic states of the West—is still not
truly universal. This is because the human rights position of the
unborn human being—usually referred to in a trivializing man-
ner as “unborn life” in a public debate in German-speaking ar-
 eas—has yet to be clarified.

His mention of Japan’s role in promoting “universal” human rights is
significant as it shows that not all “modern” ideas come from Europe. The
universality of human rights, as currently defined, arose due to the partici-
pation of many more peoples from different parts of the world in setting
human rights standards—particularly with the adoption of human rights
conventions through the United Nations.

In addition, the principles of indivisibility and interdependence of rights
are new. The drafters of the 1948 UDHR espoused the idea of fundamental
unity of all human rights as shown in the “organic unity” of the document.
This means that

each article of the Declaration must be interpreted in light of
all the rest, and especially in light of others on the same topic or
theme, and not necessarily in terms of its exact place in the final
sequence. There were for them no two kinds of citizens in the
realm of moral rights.23
Essentially, therefore, civil, cultural, economic, political and social rights should be seen as one set.

The idea of “organic unity” of human rights upholds the principles of indivisibility and interdependence of rights. It was expressed in the motto of the 1993 World Conference on Human Rights: “All Human Rights for All.” That this motto had to be promoted in the 1993 conference indicated a need to re-emphasize basic principles (indivisibility, interrelatedness, interdependence, and universality of rights), but probably also to pre-empt attempts by some UN Member-states in early 1990s to put priority on one set of rights over another set of rights.

Cultures in Asia and Human Rights

There is a bit of irony in the fact that one of the most revered Asian icons, Mahatma Gandhi, expressed a view that supported the idea that human rights must be qualified by local cultural precepts. In Hindu culture, duty comes first before everything else. There is an oft-repeated excerpt of the letter of Mahatma Gandhi on 25 May 1947:

I learnt from my illiterate but wise mother that all rights to be deserved and preserved came from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Woman and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for.

Then Secretary General of UNESCO, Julian S. Huxley, asked Mahatma Gandhi in 1947 for his opinion on human rights as an input in the drafting of the rights to be included in the very first human rights document of the UN. The quoted letter was Mahatma Gandhi’s response. The letter suggested the need to discuss duty before rights, an idea that would not support the concept of human rights being based on human dignity and nothing else. His response instead provided the idea that human rights would not accrue to a person by simply being human but only after the performance of duty. This is problematic when we consider the inherent nature of human rights as expressed in the UDHR, “All human beings are born free and equal in dignity
and rights.” (Article 1) There is no qualification to enjoying human rights immediately after birth.

Gandhi’s 1947 letter, while cited in many human rights articles, has not been evaluated based on the provisions of the UDHR. One author notes that the Gandhi letter likely reflects what many Indians would think about human rights in line with the Hindu principles.25 In relation to human rights education, the former Chairperson of the National Human Rights Commission of India argues for the inclusion of “component of obligations towards others.” Citing Gandhi’s 1947 letter, he explains that26

[T]his concept is reflected in Article 51A of the Constitution of India which enumerates the fundamental duties of every citizen and is required to be read along with the fundamental rights guaranteed in Part III thereof. This concept is gaining international recognition in as much as a draft Universal Declaration of Human Responsibilities (1997) on similar lines has been prepared for adoption by the General Assembly of the United Nations as complementary to the Universal Declaration of Human Rights.

The University Grants Commission of India provides another view on this issue by explaining how human rights education should play a role in the Indian cultural context:27

Although every right entails a duty, there has been a feeling in certain quarters that rights education is promoted and the question of duties has not been adequately addressed. In a society which emphasized on duties for centuries, rights education comes as a correction of historical distortions. The violation of rights could be corrected only when the privileged persons are reminded of their duties towards the marginalized sections, and the marginalized sections are gradually empowered through rights education. HRE [Human rights education] at these levels would extend to such areas as gender equity, caste and community relations, majority-minority conflicts, ‘forward-backward’ dilemma and North-South power relations. In short, all power relations have to be humanized and democratized through restructuring of rights and duties.
What is notable in this statement is the view about the necessity of using human rights to correct “historical distortions” and the emphasis on the duty of the “privileged persons” toward the marginalized sections in society. And the last statement about humanizing and democratizing “all” power relations ensures that this view does not promote paternalism.

Including “obligation/duty” in the human rights concept is not a problem as it is already part of the UDHR. But the idea of performing obligation/duty first before meriting enjoyment of human rights is controversial. The complementarity idea (rights being complemented by obligations) is more in line with the international thinking. (See the discussion below on a similar interpretation on how obligation relates to the human rights concept.)

During the past several decades, there have been efforts in finding positive support for human rights in local cultures and major religions. In Sri Lanka, in 1982, the Sri Lanka Foundation convened the “Seminar on Religious and Cultural Traditions of Human Rights in Sri Lanka” that came up with a set of reports on links between major religions and human rights. The seminar concluded, among others, that fundamental human rights are inalienable and that a valid basis for the meaningful consideration of human rights is the universal love of man and animal and the respect for everything that exists, both animate and inanimate, including the environment. While the different religions have their distinct religious perceptions and philosophical explanation of the universe, of human relationships, of development, of motivations and of ultimate destiny, the religious and cultural traditions of the five major religions uphold in common certain basic moral and ethical values for the promotion of which man must be enabled to exercise his rights and perform his duties in a mutuality of relationships. Among these values held in common are human dignity and worth, [e]quality, freedom, love and compassion, truth, justice, brotherhood and charity.

In 1988, the same organization that organized the 1982 seminar came out with a book that explained the support of major religions to each provision of the UDHR. The book states the importance of discussing human rights:

In a pluralistic society such as ours, a “common language” for common values is essential if we Sri Lankans are to live and work together, with understanding and genuine cooperation for
the common weal and welfare. The language of the Universal Declaration [of Human Rights] can provide that “common language” in that the concept and norms embodied in each of the Articles of the Declaration are found enshrined in the Buddhist, Hindu, Christian, and Islamic perspectives of social behaviour.

It is the view of all that this book can help the overwhelming majority of Sri Lankans to realize that, while the Universal Declaration of Human Rights is comparatively of recent origin, the norms and values in each of its Articles were started centuries ago by the Lord Buddha, the Great Hindu Saints, the Lord Jesus Christ, and the Holy Prophet.

The book includes commentaries on each of the UDHR articles from the perspective of four major religions (Buddhism, Hinduism, Christianity and Islam).

On the question of duty and rights under Hinduism, the book speaks of mutual relationship, not of rights accruing from performance of duty. Moreover, the duty being referred to is linked to what is now called human rights state obligation. On Article 29 of the UDHR regarding duty to the community, the Hindu commentary of the book explains that

[I]n the emphasis on one’s obligations to others lies an implicit recognition of the rights of the people to whom these obligations are owed. For example, the king’s obligation to protect his subject is, by implication, a recognition of the subject’s right to royal protection.

These Sri Lankan efforts on clarifying the relationship between religions and human rights were way ahead of the still to come controversy about “Asian values.” They reflect to a large extent the need to continue reviewing cultures and religions in light of ever-growing human rights concept, and the views of some Asian political leaders that support undemocratic form of governance.

In the same year, 1988, a Vietnamese scholar published a book that reviewed the old Vietnamese legal codes and sorted out those that relate to the modern international law standards on human rights. The author dis-
cussed issues covering integrity of the person, equality and discrimination, civil and political rights, economic, social and cultural rights and degree of government compliance with human rights obligations. The author was able to show the existence of legal provisions in the old Vietnamese legal codes that uphold human rights. He wrote

Using the framework of today’s international human rights standards as instruments for data compilation about, and legal analysis of, a traditional East Asian polity, this study presents systematically organized arguments on human rights, substantiated by historical facts, thus contributing to the validation of the universality of today’s international law of human rights—a research need for scholars as well as practitioners.

This analysis of the old Vietnamese legal codes is another example of efforts to understand the international human rights standards in the context of national history and traditions. Having been done prior to the debate on supposed conflict between Asian cultures/values and human rights, this effort deserves serious attention.

Similarly, a Cambodian human rights organization undertook in 1997 an initial study of the relations between human rights and Khmer culture. The short report discussed a number of specific articles in the UDHR and explained how they were related to Khmer culture (art, tradition, custom, history and religion).33

**Linking Rights to Cultures**

One author cites John Humphrey, the main UN official that supported the drafting of the UDHR, in describing Mr. Peng-chun Chang (representative of Republic of China) as a “master of the art of compromise and under cover of quotation from Confucius, would often provide a formula which made it possible for the [Human Rights] Commission to escape from impasse.”35

The “art of compromise” was an important tool in intermingling ideas from various regions of the world during the drafting of the UDHR. Mr. Chang probably cited several Confucian quotes in order to help resolve issues. But did Mr. Chang really use them as mere “cover” for his proposals to settle issues? The author neither mentions the Confucian quotations cited by Mr. Chang, nor provides examples on how they were used. There is a
possibility that Mr. Chang cited such quotations as bases of proposals. If so, the meaning of the rights in the UDHR would be much richer with Confucian ideas being part of the reasons behind them.

Nevertheless, the author makes it clear that those involved in drafting the UDHR had heard of pleas for consideration of the various cultures in their task. He writes:36

At the start of the proceedings [Carlos P.] Romulo of the Philippines said that the Commission had to draft a bill “which could be accepted by all Members of the UN and ... should take the different cultural systems of the world into account.

The drafting of the UDHR involved people from Asia (Republic of China, India, Lebanon, Pakistan, the Philippines, Saudi Arabia, and Syria) who contributed to the debates on what rights should be included in the first human rights document of the UN. They most likely expressed ideas that were possibly based on the cultures in Asia.

With this background, a question arises: how can human rights be taught as ideas that have either similarity with ideas in Asia or have been indigenized in various local Asian and Pacific contexts?

The answer to this question consists of several approaches. Each approach recognizes the existence of link between human rights and cultures.37 Culture in this sense is defined broadly covering language, religious beliefs, literature (poems, songs, novels), historical events, folklore, myths, etc.

**Historical approach**

Human rights ideas are derived from the basic concepts of justice, fairness and sense of humanity. Being basic concepts, they are found not only in a few cultures; they are found in many different cultures though in varying degrees of development. In discussing human rights, one way is to find such basic concepts expressed by leaders and institutions in the past that more or less relate to human rights. The historical approach to understanding human rights adds legitimacy to the idea of “universal” human rights.

The return to Iran in 2011 of the clay cylinder that contains the edict of King Cyrus of ancient Persia rekindled the pride of Iranians on their ancient cultural heritage. It has been reported that “since September [2010] this Ancient Persian artefact, claimed as the earliest written Bill of Rights,
has been feted, wept over and argued by more than one million Iranians.” An Iranian government official declared that the Cyrus Edict “reminded the world of his country’s ancient values.”

But more than an important relic of the past, the so-called Cyrus Edict (c. 576 BC - 530 BC) speaks of rights that are akin to present concept of human rights. The edict provides for a number of rights including the following:

- Freedom of religion
- Right against enslavement
- Freedom of movement.

The event that led to the issuance of the edict (conquering of the city-state of Babylon in 539 BC whose kings enslaved many people from other places) was itself important since it spoke of liberation from tyranny, and respect for diversity.

In India, Emperor Asoka is considered to be an enlightened Buddhist leader who issued edicts and had them engraved on rocks in various places. These so-called Asoka Rock Edicts prescribe principles that are considered supportive of human rights. Emperor Asoka is described in the following manner:

Emperor Asoka who began his reign (c. 274 BC) by extending his empire in the most ruthless manner changed completely after the carnage he saw he had caused in the Battle of Kalinga. It is evident that he was attracted to, and influenced by, the humanistic teachings of Buddhism which he subsequently embraced and then became one of its greatest patrons. His Rock Edict xii, besides the verses of the Pali Canon mentioned, is one of the most striking injunctions issued on religious tolerance and is worth quoting in some details. His subjects are enjoined “not to deprecate other religions” but on the contrary to see that “other religions are suitably honoured, for by doing so one exalts one’s co-religionists, and one “helps people belonging to other religions.”

The Asoka Rock Edicts were based on Buddhist principles, similar to the principles that were supposed to have guided other Buddhist and Hindu leaders in other places in Asia. One account explains this matter in relation to equality before the law.
In the Buddhist historical context equal protection under the law had been a concern of monarchs like Asoka of the Maurya Empire (India), Indravarman II of Cambodia and, according to the Mahavamsa, of Sri Lankan Kings such as Mahaculi Mahatissa, Bhatikabhaya and the Tamil King Elara—to name just a few. This is perfectly in accord with the dictum in the Mahavamsa that monarchs should dispense “even justice toward friend and foe on occasions of disputes in law.”

In fifteenth century Vietnam, while the laws of the Le dynasty absorbed ideologies and laws from Chinese feudal states they developed nevertheless according to the then character of Vietnamese society. One author explains the independent development of legal concepts in fifteenth century Vietnam:

> It was especially so in those regulations related to family and human rights. For example, the laws of Le dynasty defended the legitimate rights of women in their marriage relations... Many regulations were made to defend the rights and interests of women. For example, girls were entitled to the same inheritance as boys were; wives were entitled to get divorce; all measures that expressed a traditional respect for women in Vietnam. This was in utter opposition to the ideology of Chinese Confucianism, which preached “respect for men and contempt for women.” The laws of Le dynasty did not see as ‘undutiful’ any act of children to have their own properties or live away from their parents while the latter were still alive. This also meant that there was a considerable difference between Vietnamese and Chinese families.

Even in penal law, the Le dynasty differed from the Chinese penal laws by rejecting rod beating because it was “considered barbarous, as it caused painful physical injuries to the victim, staining the latter’s honor and dignity.”

Detailed analysis of the traditional Vietnamese laws reveals many more similarities with current international human rights standards.

**Appropriation (or endogenization) approach**

The never-ending exchange of ideas and systems among peoples in various parts of the world for centuries characterizes human history. Ideas and systems spread for a variety of reasons including trade, religious mission,
and military occupation. The Silk Road, for example, facilitated exchanges of ideas and systems between West and East Asia. The same is true between Europe and the Arab region and the South and Southeast Asia through land and sea routes. As a result, different ideas have been absorbed, or more properly “appropriated,” by “receiving societies.” In the late 19th century, Asian societies appropriated European ideas as their own. This is seen in the freedom movement in the Philippines where Filipino revolutionaries fought for freedom while echoing European ideas. Apolinario Mabini’s *The True Decalogue* written in 1898 is an example. Some relevant sections state:45

VI. Strive for your country’s independence, for only you can have any real interest in its advancement, and your own liberty depends on its being free.

VII. Do not recognize in your country the authority of any person whom the people have not elected, for authority comes from God and God speaks through the conscience of every man.

These ideas constitute what we now consider to be components of a republican form of government, which include the right of suffrage for the people. The idea of securing the independence of the country expresses the right to self-determination. These ideas were certainly influenced by European liberal ideas, which were not necessarily pervasive in Europe itself by late nineteenth century, in view of the continuation of the rule of monarchies.

The same appropriation of ideas can be seen in Japan’s “Look West” policy under the new government (Meiji Reform era) after ending two hundred years of isolation due to pressure of American gunboat diplomacy. Yukichi Fukuzawa’s coining of the word “jinken” as Japanese word for human rights in late nineteenth century is a perfect example of appropriation of an idea.

*Synthesis/Syncretization approach*

People in Asia mixed indigenous and foreign ideas to support their objective of gaining freedom from oppression. A good example is the use of the symbol of light. The concept of light is found in European as well as Asian cultures. Light (*lux*) is a symbol of knowledge or liberation from ignorance, and also liberation from suffering or oppression.
In Hindu theology, light is equivalent to “consciousness,” and is considered to be free (or have freedom). If lack of consciousness means lack of knowledge or ignorance, then an ignorant person suffers bondage.\textsuperscript{46}

The 1922 declaration of the National Levelers’ Association (Zenkoku Suiheisha), the \textit{Suiheisha Declaration}, using the symbol of light to express the desire of oppressed people, states:\textsuperscript{47}

\begin{quote}
We, who know just how cold human society can be, who know what it is to be pitied, do fervently seek and adore the warmth and light of human life from deep within our hearts.
\end{quote}

This seeking of the “light of human life” is a return to an earlier state of freedom and equality:

\begin{quote}
Brothers! Our ancestors pursued and practiced freedom and equality.
\end{quote}

Since oppression deprived them of freedom and equality, the rational way to go was to move back to that earlier state:

\begin{quote}
Now, the time has come when we human beings, pulsing with this blood, are soon to regain our divine dignity. The time has come for the victims to throw off their stigma. The time has come for the blessing of the martyrs’ crown of thorns.
\end{quote}

Vietnamese intellectuals in the 1920s freedom movement also espoused ideas that originated in Europe but expressed them in their own way. An important freedom movement personality during that time, Pan Boi Chau, said:\textsuperscript{48}

\begin{quote}
Human rights will rise like a golden sun, flooding the world with light.
\end{quote}

The common use in Asia of light as a metaphor for freedom or liberation or simply gaining knowledge is an example of how an idea can be common to peoples regardless of their differences in culture and other peculiarities. Light is a common human experience and seen in the same way when
related to human situation of suffering and liberation from suffering—be it in Asia or Europe.

_Indigenous concepts approach_

The idea of human rights has similarity to indigenous concepts in different societies in Asia. Thus one author writes that words similar to human rights have existed in many cultures/peoples in Asia:

> The Persians have used the Arabic word _hagg_ [or _haq_], the Hindi and Bengali have their _adhikar_ and the Sanskrit _svetve_, the Thais their _sitthi_, the Koreans their _kooahri_ [or _kwolni_] and the Filipinos their _karapatan_—all mean rights.” (Raul Manglapus, Philippines). The Universal Declaration [of Human Rights] does not affirm the institutions Westerners often equate with human rights, such as parliaments or supreme courts, but rather allows for various cultural forms by simply setting forth those political, social, and economic rights that contribute to the dignity of the individual person.

The translations of the words “human rights” into different languages reflect historical and religious development of Asian societies. Many countries in Asia did not seem to have any problem finding the equivalent terminology for human rights in their local languages. And since language grows by borrowing from other languages or cultures, people from countries that share similar outside cultural influences use almost similar adopted words to translate human rights into their own languages. Human rights have therefore been translated into local languages based on the cultural make up of the countries. Considering that several countries share cultural backgrounds, it is not a surprise to find their local language version of the words “human rights” to be similar in many ways:

a. Arabic stream – the Arabic translation for human rights, _haqūq al-‘insān_, are similar to _haqqu_ in Dhivehi (Maldives), _haqooq insaan_ in Urdu (Pakistan), and _hak asasi manusia_ in Bahasa Indonesia/Melayu/Brunei (Indonesia, Malaysia, Brunei).

b. Sanskrit stream – countries that have adopted Hindu-Buddhist tradition have translated human rights into _sittimanut_ in Lao (Laos), _sethik monus_ in Khmer (Cambodia), and _sitti-manutsayachon_ in Thai
(Thailand). The root words are the Sanskrit words *sitti* that means rights or justice, and *manu* that means human. The Hindi (India) word for human rights is *manavadhikar* probably composed of *manu* (human being) and *adhikar* (rights). Similarly, the Malay language existing in Indonesia, Malaysia, and Brunei that had been influenced by the Hindu culture, translates human rights into *hak asasi manusia*, with *manusia* having the root word *manu*.

These translations of human rights in different languages illustrate the use of old concepts of justice found in older civilizations of the Arabs in the West and people in South Asia. Other translations, such as *karapatang pangtao* in the Philippines with the root word *dapat* that means that which is correct or right, are also likely based on the local concepts of justice. In other words, the human rights idea relates directly to indigenous or even borrowed words in local languages that mean justice, rights, and human.

Similarly, the histories of different societies in Asia provide examples of indigenous notions of equality such as those relating to women. In the Philippines, the pre-colonial women enjoyed rights and privileges, ruled over communities, and acted as “priestesses and even as military leaders.” In Indonesia, in the thirteenth century, women ruled for twenty-four years without interruption. In Cambodia, during the Angkor period (802-1431 AD), women could “lead or manage public affairs [as] astrologers, professors, judges, secretaries, soldiers and high [ranking] officials.” Some people assert the continuation of this indigenous feminism in Southeast Asia despite the restrictions on women imposed by European colonialism and religions from outside the subregion.

Myths and folklores also describe societal systems and aspirations. Along with old stories written by women, these forms of literature portray women as leaders, independent-minded and strong. They also express equality between women and men, and the capacity of women to save men in time of distress.

The indigenous concepts therefore have much to offer in terms of rooting human rights in local cultures. They confirm the basic ideas of fairness, justice, and equality in some traditional societies. Indigenous concepts were probably expressed more in literature (writings, songs, poems) to oppose “mainstream” cultural-social-political norms. Some of these indigenous
concepts remained despite restrictions by later cultural influences (particularly through the European colonial rule).\textsuperscript{55}

One therefore has to argue for support for human rights by using the local cultural systems. One should not expect a total break from traditions and cultures in order to apply international human rights standards in local contexts.

A 2006 study of Pacific customs and their relationship to human rights provides similar result. The New Zealand Law Commission’s report entitled \textit{Converging Currents: Custom and Human Rights in the Pacific} explains the link between custom and human rights:\textsuperscript{56}

It is often assumed that they cannot. Some see human rights, with their perceived individualist bias, as a threat to custom. Others see custom as undermining individual rights, particularly those of disadvantaged or vulnerable groups such as women and young people.

The central thesis of \textit{Converging Currents} is that, despite apparent areas of tension and conflict, custom and human rights can be harmonized in many cases by looking at the underlying values of each.

\textit{Converging Currents} thus explains how this link can occur:\textsuperscript{57}

Certain values are also common to Pacific cultures, and it is these values that form the basis of custom. Respect for the individual dignity of all persons is perhaps the primary value underlying Pacific custom. From this flow other values such as the demonstration of love and care for others, consensus-based decision-making, and the maintenance of balance in relationships.

Such values are generally consistent with the values underlying human rights, which are also based on respect for individual human dignity. However, customary practices—what people actually do—do not always reflect customary values, or underlying beliefs about what is right. The Commission believes that much of the apparent conflict between custom and human rights is due not to the underlying values but to customary practices, and to resistance to calls for change to such practices by those in power within Pacific societies.
The distinction between “customary values” and “customary practices” is also significant in examining cultures in Asia. *Converging Currents* provides a view on customary practices:

Some customary practices need to change to accommodate human rights, and to bring practice more into line with underlying customary values, but this does not require the wholesale repudiation of custom. Indeed, by looking for common ground between custom and human rights, both may be enhanced. Human rights will be strengthened in the Pacific if they can be expressed in terms of local culture and customary values.

Just as there are cultural interpretations that say human rights are incompatible with local cultures, there are also cultural interpretations that show support for human rights in local cultures.

**Reinterpretation approach**

There are people who support the view that there are inherent contradictions between traditional cultures and human rights. They see little possibility of human rights being accommodated in particular cultural systems. The continuing caste system, for example, is seen as proof that Hinduism is not capable of allowing the principle of equality to exist. One author explains that:

> [T]he Hindu tradition does not believe in the concept of equality. The practice and prevalence of inequality has both the divine sanction and the sanction of the Law Books or the Dharma Shastras. There is no equality before the law or equal protection of law, since society has been arranged through a rigid system of social hierarchy based on caste.

Another author argues on practical grounds against the cultural values based on Buddhism to promote human rights:

In the context of the survival of the caste system and the apparent lack of influence of Buddhism over its continuity, we can pose a number of serious questions regarding the utility of using traditional categories or norms in propagating contemporary human rights values.
As earlier discussed, there are efforts that support the link between various religions in Asia and human rights. These efforts are largely premised on the principle of reinterpreting religious principles and traditional values in order to make them relevant to current realities.

Neo-Confucianists would look for ideas within the Confucian thought that would yield values shared with human rights. As one scholar explains:

The original construction of the Universal Declaration of Human Rights involved the participation of Confucians, and gained the subsequent adherence to it of countries sharing Confucian cultures. There is thus no basis for asserting any inherent compatibility between Confucianism and human rights to which most nations subscribe.

The person as understood by Confucianism in the context of human relationships is no less entitled to respect than the individual in Western human rights concepts. Thus the dichotomy of “individual” versus “community” rights is inapplicable and misleading in this case.

Other Confucians called for schools and academies as centers of public discussion, and for a constitutional order providing for wider participation in the political process. Thus, although the Confucian communitarian tradition has been overshadowed by state power and bureaucratism, it did continue to propose, albeit in adverse circumstances, consensual alternatives for promoting a more balanced relationship among the individual, the community, and the state. It is to such Confucian advocates, and not spokesmen for state power, that one should look for a genuine Chinese communitarianism as the basis for the advancement of human rights.

Another proposes the “possible transformation of Confucian virtues into rights” described in the following manner:

the cultivation of virtues by individuals-in-community should lead to an awakening of duty consciousness in an individual to the community and the public, which in turn should call forth an awareness of the individual’s legitimate potential for participating in public affairs (no individual can be separated from the public). But claims to such participation on the part of the individual require participation also in an independent rational discourse of the public interest. It further calls for a conscious-
ness of the need for the ruling political power to conform to the
count interest. Should rulers fail to conform to the public interest, protest and revolution against usurpation and oppression
may well ensue, with the attendant assertion of people’s rights
against political encroachment.

It is also important to point out that there is at least one other idea that
is known in Chinese society, Daoism. As against the emphasis on Confucian
“bureaucratism,” others would look to Daoism for its “eco-democratic hu-
manism.” Daoism has played an important role in Chinese cultural develop-
ment. As one author explains:

Daoism played an important role not only as an alternative

cosmology (or more precisely cosmogony) to Confucianism but
facilitated the syncretism between Chinese thought and other
cultural/intellectual traditions. Already when China broadened
its cultural contacts with the surrounding civilized and “barbar”
societies, Daoism facilitated the integration of the non-Chinese
cultures to the Chinese, and vice-versa. For example, Mahayana
Buddhism is known to have received a strong influence from
Daoism, and some specialists believe that a Confucian China
would not have been able to accept this Indian religion without
the mediation of Daoism.

Daoism therefore is an important cultural influence in Chinese think-
ing. And with its differing ideas from the Confucian ones, it is a crucial el-

et to consider in discussing human rights in the context of China.

On Hinduism, one author supports the view that the Hindu Code of
Manu propounds “essential human freedoms and controls and virtues of
good life.” Citing another author, he explains that the “first five tenets of
social assurances” include:

freedoms [sic] from violence (ahimsa), freedom from want (as-
teya), freedom from exploitation (aparigraha), and freedom
from early death and disease (armritava or arogya). To these five
freedoms corresponded five virtues or controls: “absence of in-
tolerance (akrodha), compassion (adroha), knowledge (vidya or
gyan), freedom of conscience or freedom from fear, frustration
and despair (pravritti, abhaya, dhriti).
He asserts that a fundamental requirement of human rights is the capacity to choose the preferred way of life that flows from the “freedom from material control of the mind.”

These and many other features of the Hindu belief support the idea of human rights. But there are also elements in Hinduism that go against human rights such as the caste system. He asserts that the caste system is a result of orthodox cultural practices, rather than the principles of Hinduism (or Rig Veda\textsuperscript{66} specifically). He explains:\textsuperscript{67}

Rig Vedic traditions did not scheme a stratified society. The division of labor was conceived to be a crucial instrument for the regulation of society. The division of labor was founded on the concept of ‘equitable distribution of responsibility’...Vedic traditions were thus absolutely secular, non-discriminatory and equitable. However, the formation of orthodox cultural practices started to emerge once the interpretation of ‘Vedic traditions’ [became dominant] that took place in the form of \textit{smritis} [writings] of \textit{rishis} (learned men).

On the other hand, a relationship between caste system and human rights is seen as possible. One author discusses quite comprehensively the different approaches to reinterpreting the caste system in support of human rights. The author concludes\textsuperscript{68}

There are thus various ways in which the caste system can be brought into relationship with human rights, through the twin concepts of \textit{varna}\textsuperscript{69} and \textit{jati}\textsuperscript{70}. The concept of varna can be viewed as a system of balancing duties and privileges. Human rights can be brought into relationship with both sides of this scale. The point at which Hindu thought makes its own contribution to human rights discourse is when it proposes that the discourse must view rights and duties as an integrated whole. Moreover, the application of the varna model to the contemporary world results in a surprising extension of human rights discourse.

In Buddhism, the idea that “each person is the Buddha to be” relates to the basis of human rights, human dignity.\textsuperscript{71}
The reformist Islamic thinkers’ interpretation of the concept of justice in the Qur’an support human rights. As one author notes, the Islamic law is “open to adaptation and change.” And in reforming Islamic law, the “core principles which form the shared notions of justice in Islam and in international human rights instrument should provide a guide to the development of the maqasid [goals of law] for a revitalization of usul fiqh [methodology of deriving interpretations]. Examples of maqasid include freedom (hurriyah to mean freedom of thought, belief, expression, action), justice and freedom, human dignity and rights, women’s rights, treating women fairly, human development and others. Miswanto (pages 100-103) of this publication provides examples of Maqasid al-Shariah (Islamic law principles) that reconcile with human rights and used in Muhammadiyah school textbook in Indonesia.

With regard to gender equality, a reinterpretation of the Qur’an can follow a methodology or approach described as a hermeneutical model that deals with three aspects of the Qur’anic text in order to support its conclusions. These are, the context in which the text was written; the grammatical composition of the text (how it says what it says); and the whole text, its Weltanschauung or worldview. She makes the distinction of making an analysis of the text and not the interpretations of the text. By going directly to the text in a fresh reading/analysis, Wadud overcomes the historicity of pre-modern fiqh and its juridical methodology to re-discover the universals to the Qur’anic message.

This methodology allows a reinterpretation of the Qur’an that considers the concept of equality as understood at present.

Using this methodology, an interpretation of a verse in the Qur’an resulted in the following observation:

...Qur’an worldview supports the equality of women and men, ...[and] recognizes difference (sex/biology) and the differences of roles/functions arising from biological differences. The reading also recognizes that constructed roles like child-caring and mothering are not limited to one’s biology.

The notion that women and men are awliyya (guides and protectors) of one another suggests a relation of respect and mutual cooperation resting not on the idea of male “superiority” but on the premises of equal partnership.
In other words, the old understanding of traditions, cultural beliefs and religions are subject to reinterpretation in order to promote, protect and realize human welfare, potentials and rights. Cultural practices are themselves products of interpretations, some of which are unfortunately causing injustice and misery. Ending injustice and misery has never been wrong. Thus a review of the basic principles of traditions, cultural beliefs and religions from a positive vantage point (i.e., in support of human rights) and in consideration of the current contexts provides a fruitful exercise.

f. Legal concepts approach

Human rights are also considered important because the word “rights” is a legal concept. Ancient laws in Asian societies provide links to human rights, whether these laws are in the form of emperor’s edicts as in the case of Cyrus and Ashoka, or legal codes.

The fifteenth century Hoc Dung Penal Code during the Le dynasty in Vietnam included provisions similar to European legal concepts such as the protection of civil liability compensation (including punitive damages) for the victims and the guarantees of procedural due process for the defendants in criminal law, the larger role of public policy in favour of the economically weak in contract law, the consistent and explicit provision of damages payments for all kinds of torts against property, person or reputation, the fair distribution and protection of property ownership, the equality of men and women in civil and property rights.

This law provides examples of non-European legal concepts that compare with modern legal concepts. They were probably ahead even of the legal concepts in sixteenth century Europe.

Current legal systems in Asia however developed by adapting legal ideas from Western Europe and North America not only because of colonial imposition but also because of recognition by some countries in the region of the value of, and need for, these late nineteenth century or early twentieth century ideas from other parts of the world. These countries sought foreign legal concepts and appropriated them into their respective legal systems from late nineteenth century. Even the formerly colonized countries in Asia continue to use colonial-era laws, though with changes in some
cases. This “legal transplantation” started from late nineteenth century. As a consequence, Spanish, Portuguese, French, German, English and American legal concepts are found in adapted forms in many national legal systems in Asia. This is a clear proof that ideas from Western Europe and Northern America have already been part of the legal structures in Asia, and the supposed conflict of ideas based on different cultural backgrounds has not led to dysfuncioning legal systems in most of the countries that had undergone “legal transplantation.” Problems that currently occur in the national legal systems would likely be due to abuse or misuse, rather than defect, of the system.

Most countries in Asia have Constitutions that provide for “basic rights,” “fundamental rights,” or “constitutional rights” that are essentially human rights. There are also Constitutions in Asia that explicitly mention human rights, led by the 1947 Constitution of Japan and those that followed in the Philippines, Thailand and recently China.

Also, there are domestic laws on specific issues (privacy, business, culture) and sectors (women, indigenous peoples, children, persons with disabilities) that protect human rights. They again prove that our current societies already recognize human rights, albeit with various degrees of limitation.

At the international level, business law provides so many rights (intellectual property rights, freedom to engage in business, right to protection from unfair trade practices, etc.) that have never been questioned by governments in Asia. While not all these business-related rights are human rights, they certainly resemble human rights in many ways.

Rooting human rights in the domestic legal system is not an issue. It is the weak recognition of such support for human rights in the domestic legal system that constitutes a major problem.

**ASEAN Experience**

The 2007 ASEAN Charter defines its human rights purpose as follows:

7. To strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member-States of ASEAN.
In terms of principles, the ASEAN Charter provides that ASEAN and its Member-States should act in accordance with

(i) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;
(j) uphold the United Nations Charter and international law, including international humanitarian law, subscribed to by the ASEAN Member-States.

As a concrete human rights measure, the ASEAN Charter provides for the following in Article 14:

1. In conformity with the principles and purposes of the ASEAN Charter relating to the protection and promotion of human rights and fundamental freedoms, ASEAN shall establish an ASEAN Human Rights Body.

In sum, the ASEAN Charter provides the over-all framework in terms of purpose, principles, and mechanism regarding the protection and promotion of human rights in the subregion.

In 2009, ASEAN adopted its Political-Security Community Blueprint (ASEAN Blueprint) that explains its objectives in the following manner:

ASEAN’s cooperation in political development aims to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN, so as to ultimately create a Rules-based Community of shared values and norms. In the shaping and sharing of norms, ASEAN aims to achieve a standard of common adherence to norms of good conduct among member states of the ASEAN Community; consolidating and strengthening ASEAN’s solidarity, cohesiveness and harmony; and contributing to the building of a peaceful, democratic, tolerant, participatory and transparent community in Southeast Asia.

What could be these “shared values and norms”? The ASEAN Blueprint could be referring to the values of peace, democracy, tolerance, participation and transparency as gleaned from the ASEAN objective of “building of
a peaceful, democratic, tolerant, participatory and transparent community in Southeast Asia.” Or could they be the supposed “Asian values” that emphasize obedience to authority, sense of national discipline, restraint in the exercise of rights particularly the political and civil rights, among others?

The ASEAN Blueprint also provides for the “exchange of information in the field of human rights among ASEAN countries in order to promote and protect human rights and fundamental freedoms of peoples in accordance with the ASEAN Charter and the Charter of the United Nations, and the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action” as part of the “actions” to be undertaken.79

Would it be fair to interpret therefore that the ASEAN “shared values and norms” should include those that uphold the Charter of the United Nations, and the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action (VDPA)?

The subsequent implementation of the ASEAN Blueprint as well as that of the ASEAN Charter led to the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) in 2010.

Under its Terms of Reference,80 the AICHR has

1.4 To promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities. [emphasis mine]

The Terms of Reference of the ACWC states as one of the objectives81 the following:

2.1 To promote and protect the human rights and fundamental freedoms of women and children in ASEAN, taking into consideration the different historical, political, sociocultural, religious and economic context in the region and the balances between rights and responsibilities. [emphasis mine]
The sentence structure of these provisions as well as content provide a virtual repetition of Article 8 of the Bangkok Declaration. This return to Article 8 of the Bangkok Declaration has been foreseen in the 1993 Joint Communiqué of six ASEAN member-states, as discussed above.

On the universality of human rights, the Terms of Reference of AICHR state:

2.2 Respect for international human rights principles, including universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms, as well as impartiality, objectivity, non-selectivity, non-discrimination, and avoidance of double standards and politicisation;

This provision restates Articles 10 and 7 of the Bangkok Declaration respectively:

10. Reaffirm the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the need to give equal emphasis to all categories of human rights;

7. Stress the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization, and that no violation of human rights can be justified.

Article 5 of the VDPA states that the “international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.” One wonders why ASEAN decided to use the language of Bangkok Declaration instead of the VDPA, this latter document is supposed to be upheld by AICHR (see Article 1.6, Purposes, Terms of Reference of AICHR).

On the whole, the ASEAN terms of reference for its human rights mechanisms emphasize how human rights should be considered, rather than state the strong commitment to fulfill state obligation on human rights regardless of backgrounds and other peculiarities of the countries involved.

While the proponents of “Asian values” have not been as strident and visible in 2000s and 2010s as compared to the situation in early 1990s, their ideas have not entirely disappeared. They are reflected to some extent in
inter-governmental declarations such as those related to the establishment of ASEAN human rights mechanisms.

Will this trend continue in the ASEAN Human Rights Declaration that would probably be adopted by the end of 2012? There is fear that this trend will continue.

The United Nations High Commissioner for Human Rights, Ms. Navanethem Pillay, stressed during the Seventh Official Meeting of the ASEAN Intergovernmental Commission on Human Rights on 28 November 2011 that:82

[E]ach region of the world has its unique cultures, traditions, institutions and histories. But what is common to all the regions is an aspiration for democracy, the rule of law and human rights.

She explained this point by saying that

One of the most important tasks that AICHR is currently engaged in is the drafting of an ASEAN Human Rights Declaration, which will set the tone for the emerging ASEAN human rights system. I hope this Declaration will be firmly based on universal human rights standards as contained in international human rights instruments, including the Universal Declaration of Human Rights. At the very least, regional human rights instruments must maintain international human rights standards, and at their best they can enrich these standards, for instance by focussing on new areas such as the rights of the older persons or the responsibilities of business in relation to human rights.

She was most likely conscious of the human rights-culture debate or the perspective on contextualized approach to human rights of ASEAN that she had to make an explicit emphasis on subscription to the international human rights standards in the forthcoming ASEAN Human Rights Declaration. She was very clear that any regional human rights instrument “must maintain international human rights standards.”

She received support from members of the civil society in Southeast Asia when they stated that “[T]he AHRD [ASEAN Human Rights Declaration] must fully uphold international human rights law and standards without
This view was elaborated in discussing the issues of “[N]ational and regional particularities” and “different backgrounds” that harked back to Article 8 of the 1993 Bangkok Declaration.

They declared:

We are proud of the rich variety of cultures, traditions, languages and peoples in ASEAN. This diversity can and should enhance and deepen ASEAN’s contribution to human rights in the region and globally. However, we are concerned that certain governments use the notion of “national, regional and cultural particularities” as a code for imposing restrictions on human rights within the AHRD. For example, when women’s bodies are deemed as extension of the community in the name of a culture or a tradition, women’s mobility within and outside the community tends to be restricted. Yet it is the same mobility, which must be protected, to allow women to access and participate in their culture and its transformation away from those practices which infringe on their human rights.

Reminiscent of the Asian regional NGO statement in 1993 earlier cited, the members of the civil society in Southeast Asia made a strong demand:

The cultural relativist approach to “particularities” and “backgrounds” must be firmly rejected, as human rights are universal and the people of ASEAN deserve the same level of respect, protection and fulfilment of their human rights that is provided universally and in other regions.

The United Nations High Commissioner for Human Rights and the Southeast Asian civil society share similar concern that ASEAN would formalize a stance opposite to the universality of human rights that the 1993 VDPA had resolved. The manner by which the ASEAN Human Rights Declaration is being drafted raises the possibility that ASEAN would revert to Article 8 of the Bangkok Declaration, and disregard Article 5 of VDPA.

It should be emphasized however that the questions raised on the way ASEAN governments as a whole define human rights should not lessen the appreciation of the efforts of the women and men whose commitment to human rights sustains their work as members of AICHR and ACWC respectively. The top priority themes under the first five-year Work Plan of ACWC
show the members’ grasp of the human rights issues affecting women and children in Southeast Asia.\textsuperscript{84}

elimination of violence against women and children; trafficking in women and children; women and children living with and affected by HIV and AIDS; social impact of climate change on women and children; promotion and protection of the rights of women and children with disabilities; ASEAN and other instruments related to the rights of women and children; child protection system: integrative/comprehensive approach for children in need for social protection; the right to quality education, including Early Childhood Care, Development and Education (ECCDE); the right of children to participate in all affairs that affect them; women participation in politics and decision making, governance and democracy; strengthening economic rights of women with regards to feminization of poverty, women’s right to land and property; promoting implementation of international [sic], gender equality in education (textbook, curriculum, and equal access); strengthening institutional capacities of ACWC; and promotion of consultation and dialogue with stakeholders at national and regional levels.

But how these issues will be addressed by ACWC in relation to national situations remains to be seen.

**Popular Perceptions**

The report on the temporary return of the Cyrus Cylinder to Iran in 2010 cited earlier quotes a young Iranian artist.\textsuperscript{85}

It is so important for us that 2,500 years ago we had human rights in our country. We get very emotional about this. Government and people are separate. Government think one thing, and the people something else.

The sentiment expressed relates to the gap between the official statements of governments and also by intellectual elites and the thought and practice of the people. The same observation is true regarding elite-es-
posed Confucianism vis-à-vis the popular perception. One author explains it in this way:  

Popular Confucianism, as it affects the man or woman in the street, is far removed from high Confucian theory. It is perhaps no more than a vague amalgam of residual ethical beliefs and a bias towards particular practices not amenable to rational analysis but nevertheless prompting certain attitudes towards the family, education, social responsibility and views of government. The family is the focus of attention and close affections, education is respected, public service [is] honoured, but government [is] viewed with a measure of suspicion. There is a concern to keep some distance between one’s family and the state, whose intentions cannot, in the last resort, be fully trusted. Such attitudes are neither obviously democratic nor readily authoritarian. They do, however, appear to lend themselves to the kind of participatory community politics which these globalizing societies appear to spawn.

Similarly, in the dynamic business practices of the overseas Chinese, what we see is not the high Confucianism of the intellectual elite—which is extremely stifling towards entrepreneurial initiative and innovative ideas—but the vulgar Confucianism of ordinary people, far removed from the centre of traditional culture. A merchant father—as vulgar Confucianist—can send his sons out to secure their own fortunes and the sons can be extremely daring in their business dealings, knowing that should they fail, they have the security of the extended family to fall back on. They can therefore assume risks which they might otherwise not consider. The high Confucian mandarin, on the other hand, would not dream of allowing his sons to engage in business ventures, as even the smallest risk of failure carries the possibility of dishonouring the family.

Indeed, governments’ use of human rights for political ends does not necessarily reflect what the people think. At the same time, intellectual elites are not necessarily able to provide ideas that ordinary people would subscribe to.

This is the context where human rights education has to operate. Human rights education has to consider how ordinary people think and behave in order to be effective. At the same time, there should also be human rights education for those holding power in government and other institutions in
society that would bridge the gap on perception of human rights between them and the ordinary people.

The different approaches to understanding human rights vis-à-vis culture briefly discussed in this article are supportive of ordinary people’s perspective. Instead of relying on intellectual discussion, they frame the human rights idea within the domain of popular knowledge. Human rights should never be understood as an elitist idea, but an idea that people encounter in their own languages, religions, folklore, literature, in the histories of their own peoples and societies, and in their sense of adaptation to the current world.

Formal institutions related to human rights (including the legal system) should develop from this popular perspective.

**Final Note**

Human rights as defined in United Nations instruments have long been encountering obstacles toward fuller realization among many peoples. The greatest challenge to full human rights realization comes from the resistance of various sectors based on a range of reasons: from political to cultural. The resistance comes from both institutions and individuals.

Studies show that there exists a serious gap between the people’s perception of human rights and the states-adopted human rights instruments. Resistance comes from a misunderstanding of the international human rights standards. In one survey, teachers would rather teach child rights, according to the Convention on the Rights of the Child, than the “militant” content of the UDHR. This shows the problem of wrong perception of human rights as a whole.

Some Asian government leaders find it useful to use Asian cultures as justification for ignoring human rights. This view exploits the existence of ideas within the varied cultures of Asia that conflict with the international human rights standards, including those practices that oppress people (such as the caste system and *buraku* discrimination). Likewise, at the individual level, the traditional culture of respect for people of higher classes (bordering on exploitation in many cases), lead people of the lower classes to not recognize their own freedom and thus reject human rights.

Thus culture must be reassessed to become a means to exercise/regain freedom. A response to the situation can be cultural in form.
The words for human rights in many countries in Southeast Asia combine Hindu-Buddhist-Arabic ideas. The concept of freedom is an indigenous idea that has been combined with influences from the religions and cultures that came to the shores of Southeast Asia centuries before. The colonial experience provided the “national form” of the freedom concept as people fight as “one nation” against foreign colonizers. One study shows that cultures can be reinterpreted, synthesized and reappropriated in order to find support for human rights in traditional principles.90 While some people see the problem with Confucianism or Hinduism supporting human rights, others see a different aspect of these influential cultural ideas that support human rights. Others would look at indigenous concepts (or even folklore) to show how people have already been practicing ideas within their own specific contexts that are similar to what we now call human rights.

In all efforts at placing human rights within one’s cultural milieu, and using culture to promote human rights, a basic rule to follow is reaffirmation. States have time and again formally stated in international documents (including agreements) that they reaffirm “their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women.” This is a necessary premise in all their human rights statements so as not to lose track of the basic foundation of all human rights initiatives.

Similarly, efforts to promote human rights must reaffirm the basic principles. There is a danger of human rights being used as a political tool rather than an end in themselves if the basic principles were not given prominence.

Experience in Asia and the Pacific would point to the Convention on the Rights of the Child as a significant opening to reaffirm the basic principles of human rights. Aside from having been widely ratified by states in Asia and the Pacific, it also has provisions on culture. It provides for the complete set of rights—civil, cultural, economic, political and social rights—to be enjoyed by the children.

Human rights education, on the other hand, can follow these culture-related principle and recommendation:91

Principles

5. Human rights education in Asia-Pacific countries must draw on the rich cultural heritage and diversity in this region.
including appropriate recognition of family and community values.

Recommendations

2. Evolve appropriate and effective human rights teaching strategies that build on the liberating elements of indigenous concepts, folk knowledge and cultural practices.

Since values education is part of the school curriculum of many countries in Asia and the Pacific, it has been considered as one form of teaching or learning human rights. Those values that are seen as generally accepted by people have been utilized to explain human rights. The idea is that values, including those considered to be of traditional kind, are underlying principles of human rights. Understanding values can therefore lead to an appreciation of human rights. Some values (such as freedom, privacy, respect for life) are actually human rights themselves. Human rights education can therefore be taught either as straightforward human rights subject or integrated in core and non-core subjects in the school curriculum. Various types of education (education for international understanding, education for sustainable development, peace education, etc.) are vehicles of human rights education, as long as human rights are deliberately presented in appropriate form.

Finally, the promotion of human rights must work with the current fast-developing cultural vehicles—the information and communication technologies—that affect a large section of today’s society. The current, and likely in the future too, dominant mode of information source (including culture change) has to be mobilized for human rights. It is a significant area of work since it is currently affecting the world of the young generation. Human rights education is also a future-oriented endeavor that should aim at continuity as well as change of culture using whatever effective means available.

Culture change is constant. Human rights must therefore be reaffirmed as well as developed within the continuing context of culture change.

This is an expanded version of the article of the author published with the title “Conflict on Asian Values: Human Rights and Culture” in Kazue Muta, Yasumasa Hirasawa and Shinichiro Ishida, editors, Conflict Between Justice, Gender and Local Traditions (Conflict Studies in the Humanities Series no. 3) Osaka: Osaka University Press, 2012), pages 123-160.
Endnotes


3 Ibid.

4 A 1990s account on this debate is as follows:

Lee Kuan Yew of Singapore criticized the Philippine system for causing “… undisciplined and disorderly conditions which are inimical to development”. He explains that the “… Philippines has an American-style Constitution, one of the most difficult to operate in the world. There is a complete separation of powers between the executive, legislature, and judiciary. But a developing country faced with disorder and under-development needs a strong, honest government. The Ramos presidency will have to prove that this democratic constitution can be made to work and that development is achievable. Many checks and balances have been written into the constitution to guard against abuse of power. But they must not lead to paralysis of government. At the end of the day, the discussion and debate, the legislature must allow the executive to take hard decisions.” [An author countered this view by saying that the] success of the Philippine experiment on development and democracy will prove Lee Kuan Yew wrong and set a new thesis on development in a developing country setting.” See Armando Doronila, “Democracy and Development,” INTERSECT, vol. 8 no. 8 September 1994, Institute on Church and Social Issues, Ateneo de Manila University, Quezon city, Philippines.

In a November 1996 article in The Economist, it is reported that the concept of democracy and development seems to be getting realized in the Philippines. With the economic development that has happened up to November 1996, “maybe Mr. Lee was wrong.” See “Learning from the Philippines,” The Economist, November 16, 1996, pages 19-20.

In February 1998, President Kim Dae Jung in his inaugural address stressed the need for democracy and economic development to be pursued simultaneously. This is obviously a reaction to the lack of democratic process in the economic system of Korea that caused its present financial turmoil. But in an earlier published article, it is asserted that the present financial turmoil in Asia did not spare countries which are considered to be democratic citing as examples Japan, Korea and Thailand. It is argued that rather than democracy, it is accountability that is needed to sustain the economic progress enjoyed for several decades by those countries now suffering from financial turmoil. See Asad Latif, “Accountability, not democracy, is key,” Japan Times, December 22, 1997. One may ask, therefore, whether countries lacking in transparency, accountability and access to information can be considered democratic when seen in the context of definition of democracy used in this paper. It is logical to conclude that these countries are not fully democratic since the principles of transparency, ac-
countability and access to information, among others, are basic elements of a democratic system.

The latest word on this debate comes from a forum organized by the World Bank and the Asian Development Bank held in Manila in March 1998 where some economic experts said that the investment of the Philippines in putting in place democratic systems have helped the country weather the current financial crisis in Asia. They then urged other countries in the region to hasten democratic reforms. This report is the latest on the democracy and development argument. See “Democracy, investor confidence linked,” Japan Times, March 12, 1998.


7 ASEAN, Joint Communiqué at the 26th ASEAN Ministerial Meeting (AMM) in Singapore, 23-24 July 1993, page 3.

8 Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand.

9 The following countries sent representatives to the conference: Afghanistan, Bahrain, Bangladesh, Brunei, Cambodia, Democratic People’s Republic of Korea, India, Indonesia, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, Lebanon, Laos, Malaysia, Myanmar, Nepal, Oman, Pakistan, State of Palestine, the Philippines, Qatar, Saudi Arabia, Singapore, Sri Lanka, Syria, Thailand, Timor Leste, Turkmenistan, United Arab Emirates, Uzbekistan, Vietnam, and Yemen. See report on the conference at www.namchrcd.com/Articles/tabid/73/Default.aspx.


11 Cambodia, China, Laos, Myanmar, Thailand and Vietnam.

12 ASEAN has adopted by 2004 a plan to establish an ASEAN commission on the promotion and protection of the rights of women and children under its Vientiane Action Programme 2004-2010 (VAP). See TOR AICHR, page 1.


14 During the deliberation of the draft of this resolution at the Third Committee, one step before the UN General Assembly adopted it, a concern was raised on its impact on VDPA. The report states:
The representative of Switzerland said it was satisfied to join in the consensus [that approved the draft resolution], but would like to express concern that certain aspects of the resolution could be interpreted as calling into question what was achieved in the Vienna Declaration and Programme of Action. All human rights were interdependent and should receive equal emphasis, so Switzerland had difficulty recognizing the resolution’s emphasis on the right to development.


15 This section draws largely from the author’s Commentary on the Presentations on Conflict between Traditional Values and International Human Rights Standards, presented at the symposium entitled “Conflict between Asian Values and International Human Rights Standards: The Case of Northeast Asia” on 13 March 2010 in Osaka organized jointly by the Osaka University Center for Excellence Program and HURIGHTS OSAKA.


17 This is based on the presentation of Professor Kim Eun-Shil of the Department of Women’s Studies, Ewha Woman’s University (Seoul) on the history of the human rights movement in Korea and the question raised on the treatment of minority issues as human rights issues. The presentation was made during the symposium entitled “Conflict between Asian Values and International Human Rights Standards: The Case of Northeast Asia.”


21 At the international level, a series of world conferences occurred in the 1990s that further refined human rights in relation to many issues of global significance. From 1990 in Jomtien on education and in New York on children, to 1992 in Rio on development and environment, to 1993 in Vienna on human rights, to 1994 in Cairo on population and development, to 1995 in Beijing on women, to 1996 in Istanbul on human settlement, all have human rights provisions for each of the
specific issues. The conference declarations that were adopted were important state-
ments on how human rights should apply to particular issues.

Schmale, editor, Human Rights and Cultural Diversity—Europe, Arabic-Islamic
23 Johannes Morsink, The Universal Declaration of Human Rights: Origins,
Drafting, and Intent (Philadelphia: Pennsylvania Studies in Human Rights, 1999),
page xiv.
24 Mahatma Gandhi, “A Letter Addressed to the Director-General of
UNESCO,” in United Nations Educational, Scientific and Cultural Organization, edit-
or, A Collective Approach to the Problem of Human Rights (Provisional Manuscript),
Plantilla and Sebasti L. Raj, SJ, editors, Human Rights in Asian Cultures—Continuity
and Change (Delhi/Osaka: Asia-Pacific Human Rights Information Center, 1997),
page 50.
27 University Grants Commission, XI Plan Guidelines for Human Rights
Education (Delhi, University Grants Commission undated), pages 2-3.
28 Wesumperuma and R. P. Berndt, editors, Religion and Culture in the
page x.
29 The book is entitled Human Rights and Religions in Sri Lanka—A
Commentary on the Universal Declaration of Human Rights, published by the Sri
30 Sri Lanka Foundation, Human Rights and Religions in Sri Lanka—A
Commentary on the Universal Declaration of Human Rights (Colombo: Sri Lanka
Foundation, 1988), pages x-xi.
31 Ibid., page 279.
32 Ta Van Tai, The Vietnamese Tradition of Human Rights (Berkeley: Institute
33 Thun Saray, editor, Human Rights Through Khmer Culture (Phnom Penh:
Cambodia Human Rights and Development Association, 1997).
34 John Humphrey was the representative of the UN Secretariat to the
Commission on Human Rights. He was the Director of the Human Rights Division
in the Secretariat’s Department of Social Affairs. (See www.udhr.org/history/
Biographies/biojh.htm)
35 Morsink (op. cit, page 30) took this citation from John Humphrey, Human
page 23.
37 The discussion here of approaches to linking cultures to human rights com-
plements similar discussion viewed from an international perspective in “Human


41 Ibid., page 60.


43 Ibid., page 203.

44 See Ta Van Tai, op. cit.


47 Buraku Liberation and Human Rights Research Institute, The Declaration and General Principles of the Suiheisha (Levelers Association) (Osaka: Buraku Liberation and Human Rights Research Institute, 2002).


54 Quejada and Obinario, op. cit., pages 195-196; Srinivasan, op. cit., pages 107-121.

55 For a discussion on how cultural values relate to several countries in Asia, see Plantilla and Raj, op. cit.


57 Ibid., pages 8-9.
58 Raj, op. cit., page 53.
60 De Bary, op. cit., page 10.
64 Ibid., page 304.
66 Rig Veda or Rg Veda is the first and earliest of the four Vedas, the foundational scriptures of Hinduism. Taken from Arvind Sharma, Hinduism and Human Rights (New Delhi: Oxford University Press, 2004), page 204.
67 Sangroula, op. cit., page 83.
69 Varna denotes one of the classes constituting the four-fold classification of society in Hinduism into Brahmanas, Ksatriyas, Vaisyas, and Sudras. Sharma, ibid., page 205.
70 Jati means a group to which one belongs by birth, such birth often determining the nature of one’s occupation and the social circle to which one belongs. Sharma, ibid., page 200.
71 Vo, op. cit., page 103.
73 Ibid.
74 As cited by Ahmad on page 317. Citation of sources deleted.
75 Ibid., page 314.
76 Ibid., page 315.
77 Vo, op. cit., page 105.
79 Ibid., page 6.
80 Text available at www.aseansec.org/22769.htm.


85 Hoyle, op. cit.


89 This author once visited a school in Mumbai, India where a non-governmental organization (NGO) implemented an education program. When a staff was asked if the NGO was doing human rights education, the answer was in the negative. The NGO staff said the NGO was doing child rights education. What really is the difference between human rights education and child rights education? None, except that the latter was likely more acceptable to educators in general.

90 See Plantilla and Raj, 1997, op. cit.


93 See for example the education programs of the UNESCO-affiliated Asia-Pacific Centre of Education for International Understanding. By and large, human rights are included in these programs.

94 A survey of HURIGHTS OSAKA reveals that the internet is a poor source of human rights information whether in a country with highly developed and pervasive internet infrastructure (specifically, Japan) or in countries with less developed infrastructures (such as India and the Philippines). It seems that the internet has not been attractive enough for the young people to get the human rights information they need. See Plantilla, 2008, op. cit., page 246.
Resolution adopted by the General Assembly
[on the report of the Third Committee (A/66/457)]

66/137. United Nations Declaration on Human Rights Education and Training

The General Assembly,

Welcoming the adoption by the Human Rights Council, in its resolution 16/1 of 23 March 2011, of the United Nations Declaration on Human Rights Education and Training,

1. Adopts the United Nations Declaration on Human Rights Education and Training annexed to the present resolution;

2. Invites Governments, agencies and organizations of the United Nations system, and intergovernmental and non-governmental organizations to intensify their efforts to disseminate the Declaration and to promote universal respect and understanding thereof, and requests the Secretary-General to include the text of the Declaration in the next edition of Human Rights: A Compilation of International Instruments.

89th plenary meeting
19 December 2011
Annex

United Nations Declaration on Human Rights Education and Training

The General Assembly,

Reaffirming the purposes and principles of the Charter of the United Nations with regard to the promotion and encouragement of respect for all human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Reaffirming also that every individual and every organ of society shall strive by teaching and education to promote respect for human rights and fundamental freedoms,

Reaffirming further that everyone has the right to education, and that education shall be directed to the full development of the human personality and the sense of its dignity, enable all persons to participate effectively in a free society and promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace, security and the promotion of development and human rights,

Reaffirming that States are duty-bound, as stipulated in the Universal Declaration of Human Rights,\(^2\) the International Covenant on Economic, Social and Cultural Rights\(^3\) and in other human rights instruments, to ensure that education is aimed at strengthening respect for human rights and fundamental freedoms,

Acknowledging the fundamental importance of human rights education and training in contributing to the promotion, protection and effective realization of all human rights,

Reaffirming the call of the World Conference on Human Rights, held in Vienna in 1993, on all States and institutions to include human rights, humanitarian law, democracy and rule of law in the curricula of all learning institutions, and its statement that human rights education should include peace, democracy, development and social justice, as set forth in international and regional human rights instruments, in order to achieve common understanding and awareness with a view to strengthening universal commitment to human rights,\(^4\)
Recalling the 2005 World Summit Outcome, in which Heads of State and Government supported the promotion of human rights education and learning at all levels, including through the implementation of the World Programme for Human Rights Education, and encouraged all States to develop initiatives in that regard,

Motivated by the desire to send a strong signal to the international community to strengthen all efforts in human rights education and training through a collective commitment by all stakeholders,

Declares:

Article 1

1. Everyone has the right to know, seek and receive information about all human rights and fundamental freedoms and should have access to human rights education and training.

2. Human rights education and training is essential for the promotion of universal respect for and observance of all human rights and fundamental freedoms for all, in accordance with the principles of the universality, indivisibility and interdependence of human rights.

3. The effective enjoyment of all human rights, in particular the right to education and access to information, enables access to human rights education and training.

Article 2

1. Human rights education and training comprises all educational, training, information, awareness-raising and learning activities aimed at promoting universal respect for and observance of all human rights and fundamental freedoms and thus contributing, inter alia, to the prevention of human rights violations and abuses by providing persons with knowledge, skills and understanding and developing their attitudes and behaviours, to empower them to contribute to the building and promotion of a universal culture of human rights.

2. Human rights education and training encompasses:
(a) Education about human rights, which includes providing knowledge and understanding of human rights norms and principles, the values that underpin them and the mechanisms for their protection;

(b) Education through human rights, which includes learning and teaching in a way that respects the rights of both educators and learners;

(c) Education for human rights, which includes empowering persons to enjoy and exercise their rights and to respect and uphold the rights of others.

**Article 3**

1. Human rights education and training is a lifelong process that concerns all ages.

2. Human rights education and training concerns all parts of society, at all levels, including preschool, primary, secondary and higher education, taking into account academic freedom where applicable, and all forms of education, training and learning, whether in a public or private, formal, informal or non-formal setting. It includes, inter alia, vocational training, particularly the training of trainers, teachers and State officials, continuing education, popular education, and public information and awareness activities.

3. Human rights education and training should use languages and methods suited to target groups, taking into account their specific needs and conditions.

**Article 4**

Human rights education and training should be based on the principles of the Universal Declaration of Human Rights and relevant treaties and instruments, with a view to:

(a) Raising awareness, understanding and acceptance of universal human rights standards and principles, as well as guarantees at the international, regional and national levels for the protection of human rights and fundamental freedoms;

(b) Developing a universal culture of human rights, in which everyone is aware of their own rights and responsibilities in respect of the rights of others, and promoting the development of the individual as a responsible member of a free, peaceful, pluralist and inclusive society;
(c) Pursuing the effective realization of all human rights and promoting tolerance, non-discrimination and equality;
(d) Ensuring equal opportunities for all through access to quality human rights education and training, without any discrimination;
(e) Contributing to the prevention of human rights violations and abuses and to the combating and eradication of all forms of discrimination, racism, stereotyping and incitement to hatred, and the harmful attitudes and prejudices that underlie them.

Article 5

1. Human rights education and training, whether provided by public or private actors, should be based on the principles of equality, particularly between girls and boys and between women and men, human dignity, inclusion and non-discrimination.

2. Human rights education and training should be accessible and available to all persons and should take into account the particular challenges and barriers faced by, and the needs and expectations of, persons in vulnerable and disadvantaged situations and groups, including persons with disabilities, in order to promote empowerment and human development and to contribute to the elimination of the causes of exclusion or marginalization, as well as enable everyone to exercise all their rights.

3. Human rights education and training should embrace and enrich, as well as draw inspiration from, the diversity of civilizations, religions, cultures and traditions of different countries, as it is reflected in the universality of human rights.

4. Human rights education and training should take into account different economic, social and cultural circumstances, while promoting local initiatives in order to encourage ownership of the common goal of the fulfilment of all human rights for all.

Article 6

1. Human rights education and training should capitalize on and make use of new information and communication technologies, as well as the media, to promote all human rights and fundamental freedoms.
2. The arts should be encouraged as a means of training and raising awareness in the field of human rights.

**Article 7**

1. States, and where applicable relevant governmental authorities, have the primary responsibility to promote and ensure human rights education and training, developed and implemented in a spirit of participation, inclusion and responsibility.

2. States should create a safe and enabling environment for the engagement of civil society, the private sector and other relevant stakeholders in human rights education and training, in which the human rights and fundamental freedoms of all, including of those engaged in the process, are fully protected.

3. States should take steps, individually and through international assistance and cooperation, to ensure, to the maximum of their available resources, the progressive implementation of human rights education and training by appropriate means, including the adoption of legislative and administrative measures and policies.

4. States, and where applicable relevant governmental authorities, should ensure adequate training in human rights and, where appropriate, international humanitarian law and international criminal law, of State officials, civil servants, judges, law enforcement officials and military personnel, as well as promote adequate training in human rights for teachers, trainers and other educators and private personnel acting on behalf of the State.

**Article 8**

1. States should develop, or promote the development of, at the appropriate level, strategies and policies and, where appropriate, action plans and programmes to implement human rights education and training, such as through its integration into school and training curricula. In so doing, they should take into account the World Programme for Human Rights Education and specific national and local needs and priorities.

2. The conception, implementation and evaluation of and follow-up to such strategies, action plans, policies and programmes should involve all
relevant stakeholders, including the private sector, civil society and national human rights institutions, by promoting, where appropriate, multi-stakeholder initiatives.

Article 9

States should promote the establishment, development and strengthening of effective and independent national human rights institutions, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), recognizing that national human rights institutions can play an important role, including, where necessary, a coordinating role, in promoting human rights education and training by, inter alia, raising awareness and mobilizing relevant public and private actors.

Article 10

1. Various actors within society, including, inter alia, educational institutions, the media, families, local communities, civil society institutions, including non-governmental organizations, human rights defenders and the private sector, have an important role to play in promoting and providing human rights education and training.

2. Civil society institutions, the private sector and other relevant stakeholders are encouraged to ensure adequate human rights education and training for their staff and personnel.

Article 11

The United Nations and international and regional organizations should provide human rights education and training for their civilian personnel and for military and police personnel serving under their mandates.

Article 12
1. International cooperation at all levels should support and reinforce national efforts, including, where applicable, at the local level, to implement human rights education and training.

2. Complementary and coordinated efforts at the international, regional, national and local levels can contribute to more effective implementation of human rights education and training.

3. Voluntary funding for projects and initiatives in the field of human rights education and training should be encouraged.

Article 13

1. International and regional human rights mechanisms should, within their respective mandates, take into account human rights education and training in their work.

2. States are encouraged to include, where appropriate, information on the measures that they have adopted in the field of human rights education and training in their reports to relevant human rights mechanisms.

Article 14

States should take appropriate measures to ensure the effective implementation of and follow-up to the present Declaration and make the necessary resources available in this regard.

2 Resolution 217 A (III).

3 See resolution 2200 A (XXI), annex.
5 See resolution 60/1, para. 131.
6 Resolution 48/134, annex.
About the Authors

Sedfrey M. Candelaria
Head, Research, Publications and Linkages Office
Chair, Department of Special Areas of Concern
Professor II, Corps of Professors
Philippine Judicial Academy
Manila, Philippines
e-mail: research_philja@yahoo.com

Ronald Paz Caraig
Judicial Staff Officer V
Research, Publications and Linkages Office
Philippine Judicial Academy
Manila, Philippines
e-mail: research_philja@yahoo.com

Drik Picture Library
Dhaka, Bangladesh
e-mail: chuls201@gmail.com; chulie@drik.net

Khamboly Dy
Team Leader and Author of "A History of Democratic Kampuchea (1975-1979)"
Genocide Education Project
Documentation Center of Cambodia
Phnom Penh, Cambodia
e-mail: truthboly@dccam.org

Annika Kovar
Access to Justice Adviser to the Public Defender General
UNDP Justice System Program Timor-Leste
Dili, Timor-Leste
e-mail: annika.kovar@undp.org and a.kovar@gmail.com
Bruce Lasky  
Founder and Director  
Bridges Across Borders Southeast Asia  
Community Legal Education Initiative  
Chiangmai, Thailand  
e-mail: blasky@babseacle.org

Agus Miswanto  
Lecturer, Muhammadiyah University of Magelang  
Secretary, The Center for Islamic Studies and Culture  
Muhammadiyah University of Magelang  
Kota Magelang, Central Java, Indonesia  
e-mail: agus_miswanto08@yahoo.com

Shreekrishna Mulmi  
Research Officer  
National Judicial Academy of Nepal  
Kathmandu, Nepal  
e-mail: skmulmi@hotmail.com

National Human Rights Commission of Human Rights  
Dhaka, Bangladesh  
e-mail: nhrc.bd@gmail.com

Norbani Mohamed Nazeri  
Associate Professor  
Faculty of Law, University of Malaya  
Kuala Lumpur, Malaysia  
e-mail: norbanim@um.edu.my

Jefferson R. Plantilla  
Chief Researcher  
HURIGHTS OSAKA  
Osaka, Japan  
e-mail: jeff@hurights.or.jp
Melinda Sullivan  
Former Regional Legal Coordinator  
United Nations Inter-Agency Project on Human Trafficking (UNIAP)  
Bangkok, Thailand  
e-mail: melinda.sullivan@gmail.com

Lisa Rende Taylor, PhD  
Chief Technical Advisor  
United Nations Inter-Agency Project on Human Trafficking (UNIAP)  
Bangkok, Thailand  
e-mail: lisa.rende.taylor@undp.org
The Asia-Pacific Human Rights Information Center or HURIGHTS OSAKA, inspired by the Charter of the United Nations and the Universal Declaration of Human Rights, formally opened in December 1994. HURIGHTS OSAKA has the following aims: 1) to engender popular understanding in Osaka of the international human rights standards; 2) to support international exchange between Osaka and countries in Asia-Pacific through collection and dissemination of information and materials on human rights; and 3) to promote human rights in Asia-Pacific in cooperation with national and regional institutions and civil society organizations as well as the United Nations.

Asia-Pacific Human Rights Information Center (HURIGHTS OSAKA)
8F, Takasagodo Bldg.
1-7-7 Nishihonmachi, Nishi-ku
Osaka 550-0005 Japan
ph (816) 6543-7002
fax (816) 6543-7004
e-mail: webmail@hurights.or.jp
www.hurights.or.jp