

Table of Contents

From the speech ‘APEC: Human Rights and Development’ given by Ross Daniels, November 1996

Globalization and Regionalisation2

The indivisibility debate3

Economic growth3

Human development4

New victims, new defenders6

A call to action10

Trade Unions13

People’s Republic of China13

South Korea15

Mining, Land and Environment17

Indonesia17

Peasants and Indigenous People19

Mexico19

Land Disputes21

Philippines21

Migrant Workers23

Malaysia23

Keywords: APEC1 / ARBITRARY ARREST / BANNING / CENSORSHIP / COMMUNITY WORKERS / DEATH IN CUSTODY / DETENTION FOR RE-EDUCATION / DETENTION WITHOUT TRIAL / DISAPPEARANCES / EXTRAJUDICIAL EXECUTION / FARMERS / HARASSMENT / HUMAN RIGHTS DEFENDERS / INDIGENOUS PEOPLES / LAND PROBLEMS / MIGRANT WORKERS / MINERS / NON-GOVERNMENTAL ENTITIES / PEASANTS / SEXUAL ASSAULT / TORTURE/ILL-TREATMENT / TRADE UNIONISTS / WOMEN /

APEC
Human rights and development

The following is the text of a speech 'APEC: Human rights and development' given by Ross Daniels, member of Amnesty International's International Executive Committee (IEC) responsible for Asia, at the Manila People's Forum on APEC in November 1996, and also six illustrative case studies from the APEC region.

Globalisation and Regionalisation

The economic ascendancy of East Asia and the integration of the Pacific Rim economies will be one of the defining features of the twenty-first century. Over the last two decades, economic growth in the Asia-Pacific has outstripped that of the rest of the world. Many regional economies have been growing at ten per cent a year or higher. The Asia Pacific Economic Cooperation (APEC) economies now account for more than half of the world's GDP, nearly half of its exports, and a third of its total trade. The IMF has estimated that Asia's economies, taken together, will be half as large again in 2000 as they were in 1993.

And while the Asia-Pacific has become more important to the world economy, it has also become more important to itself. Increased flows of trade and investment between APEC countries have resulted in their economies becoming more integrated and interdependent. Today, APEC countries trade more with each other than do the countries of the European Union. More than two thirds of Asia-Pacific trade stays within the region. More than half of the foreign investment flows within APEC originate from APEC members themselves.

In this way, the forces of economic globalisation can be seen at work at a regional level. "Mature" economies like Japan are hollowing out, shifting production off shore to countries that offer cheap labour and high returns. And other economies are moving into the areas of production on which Japan and others built their economic might. It is not unusual for a car driven in Sydney to have been built in Kuala Lumpur using components made in Shenzhen to a design created in Osaka.

It is no surprise then that the first signs of an emerging regional identity in the Asia-Pacific and forms of cooperation between Asia-Pacific countries should arise in the economic field. The Asia-Pacific region is leading the world in trade and investment liberalisation, encapsulated in the APEC vision of free trade in the region by the year 2010 outlined by APEC leaders at their meeting in Bogor, Indonesia in 1994. Free trade areas are proliferating on both sides of the Pacific, from elaborate structures such as the Asian Free Trade Area (AFTA) and the North American Free Trade Agreement (NAFTA) to special economic zones along China's eastern seaboard.

While this paper focuses on the consequences of these developments for APEC countries, these are not confined to the current boundaries of APEC grouping. Trade and investment flows, political links and people movement within and without APEC impact directly on the countries of South Asia and Indo-China, not to mention other parts of the developing and industrialised

APEC: Human rights and development

world. Just as governments and elites from India to Vietnam are adopting the discourse and models of development perceived to underpin East Asia's economic success, so too are people in those countries experiencing the positive and negative consequences for their human rights.

The indivisibility debate

The economic ascendancy of the Asia-Pacific region has seen the beginnings of a fundamental shift in the focus of world affairs from the Atlantic to the Pacific. In the next decades, many of the key economic, security, social and environmental challenges facing the world will emerge and play themselves out in the Asia-Pacific.

So too will the region remain a frontline for the debate on human rights. Because, with more than half the world's population, respect for human rights in the Asia-Pacific will always be a critical measure of the state of human rights internationally.

To date, this debate has largely revolved around the relationship between universal human rights and specific cultural values. Strong economic growth has given many Asian governments and elites a new self confidence which, combined with the ideological hangover from a colonial past, has seen them articulate so-called "Asian values" and "social models" which challenge the universality of human rights.

But increasingly, the debate on human rights will focus on the relationship between human rights and development and the relative status or priority of economic, social and cultural rights *viz* civil and political freedoms. In short, the universality debate will be joined by the indivisibility debate.

Economic growth

Throughout the Asia-Pacific region, these questions are thrown into stark relief. Many governments have sought to hijack the language and discourse of human rights to serve their own interests. They insist on the primacy of the "right to development", justifying authoritarian means by economic ends. The imperative of economic growth, they say, necessitates strong government and the subjugation of the individual's interests to those of the community; only when a country has attained a certain level of development can it afford the luxury of civil and political freedoms. To back up their argument, they highlight the economic stagnancy and social problems of more liberal societies, both close to home and in the west. And they point to improved living standards for some sections of their communities.

APEC: Human rights and development

In Indonesia, for instance, the World Bank estimates that absolute poverty has fallen from about 60% to 14% of the population in the last three decades. Indicators such as literacy and child mortality are greatly improved. In China, economic reforms since 1979 have led to an increase in rural incomes, which in turn have fuelled rapid industrialisation. Life expectancy has grown and tens of millions who were trapped in great poverty have seen their diet, health and future prospects improve. Relatively privileged urban "middle classes" have emerged in many provinces, with lifestyles more comparable to those of their counterparts across the Asia-Pacific region.

However positive these economic developments might be, arguments of this kind are often used by governments as a prop for their legitimacy and a cloak for the abuses they visit on their people in the name of "development". The ideology and values used by some to explain the East Asian "economic miracle" relate more to forces of the market than culture, more to the exercise of power than local tradition.

It is also a mistake to measure development and progress by stark economic indices. The dividends of economic growth are not equitably shared. In China, for instance, there is a burgeoning gap between the booming eastern seaboard and poorer inland areas. According to revised World Bank estimates, around 300 million Chinese people live in poverty on incomes of less than US\$1 a day. And while poverty levels have fallen in Indonesia, the World Bank has found that poverty is becoming increasingly localised in terms of geography, occupation, household size, age, gender and other characteristics.

Human development

In any event, quality and security of life cannot be measured solely in terms of GDP growth or per capita income. Genuine, sustainable development is a more holistic process, embracing the place of individuals in civil society, their personal security and their capacity to determine and realise their potential. As United Nations Development Program policies state:

"The concept of human development is much broader than the conventional theories of economic development... It analyses all issues in society - whether economic growth, trade, employment, political freedom or cultural values - from the perspective of the people. It thus focuses on enlarging human choices...."

Or as made clear in the Declaration on the Right to Development adopted by the UN General Assembly in 1986:

"the human person is the central subject of development."

APEC: Human rights and development

In this way, the process of development brings together the full range of human rights - civil, cultural, economic, political and social - into one indivisible and interdependent whole. Freedom from fear and freedom from want are the two sides of the same coin. From the preamble to the International Covenant of Economic, Social and Cultural Rights, one of the cornerstones of international human rights law:

“the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.”

Sadly, the historical evolution of international human rights law saw the artificial and misleading separation of civil and political rights and economic, social and cultural rights into separate covenants with separate characters. But in 1993, at the World Conference on Human Rights in Vienna, the governments of the world bridged this gap by declaring that:

“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.”

And elsewhere:

“While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognised human rights.”

This affirmation has been echoed in other landmark declarations by the international community on the place of human rights in development. The World Summit on Development in Copenhagen in 1995 declared that:

“in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and... accordingly, the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms...”

And in relation to the place of women in development, the 1995 Beijing Declaration and Platform for Action said:

“Poverty has various manifestations including lack of income and resources sufficient to ensure a sustainable livelihood... It is also characterised by lack of participation in decision-making

APEC: Human rights and development

and in civil, social and cultural life."

Far more eloquent than the negotiated words of international instruments is this testimony of former Senator Jose Diokono, one of the pioneers of human rights protection in Asia:

"As lawyer for small farmers, fishermen, workers, students and urban poor, many of who have been detained, a few of whom have been shot and wounded when they were peacefully exercising their rights of assembly, I have learned the painful lesson that we cannot enjoy civil and political rights unless we enjoy economic, cultural and social rights, any more than we can insure our economic, social and cultural rights, unless we can exercise our civil and political rights. True, a hungry man does not have much freedom of choice. But equally true, when a well fed man does not have freedom of choice, he cannot protect himself against going hungry."

New victims, new defenders

It has always been people from the marginalised sectors of society - the poor, the minorities and indigenous people, women - who have borne the brunt of human rights violations worldwide. Changes in the global economy have only exacerbated this process. As the 1996 UN Human Development Report found:

"widening disparities in economic performance are creating two worlds - ever more polarised ...and the gulf between rich and poor has widened further."

Economic liberalisation and growth have deepened the marginalisation of the poor and vulnerable groups and contributed to further violations of their human rights. In turn, those who have campaigned against such abuses - who have spoken out for the economic, social or cultural rights of their own people - have themselves become the targets of repression.

The forces of globalisation have drawn countries into a relentless struggle for competitiveness, the result being downward pressure on wages and conditions in the interests of attracting foreign investment. In this context, many states see **independent trade union activity** as a threat and go to great lengths to curb the legitimate, peaceful exercise by workers of basic freedoms of association and expression, as laid down in the International Covenant on Economic, Social and Cultural Rights and Conventions 87 and 98 of the International Labour Organisation.

In South Korea, for instance, the Korean Confederation of Trade Unions is not recognised by the government, despite bringing together some 450,000 members from over 850 trade unions. It is deemed a "third party" in labour disputes and its leaders have been prosecuted for carrying out activities on behalf of its members. While the Korean Government is currently reviewing its

APEC: Human rights and development

labour laws, as they currently stand these "non-recognised" trade union leaders can and have been charged for their peaceful defence of workers' rights. Kwon Yong-kil and Yang Kyu-hun were arrested for such "offences" in November 1995 and February 1996 and are currently on bail awaiting trial.

In China, the All China Federation of Trade Unions, which operates "under the leadership of the Communist Party", is the only official trade union and plays a central role in implementing labour legislation of the 1990s. It is faced with an ever-growing tide of industrial disputes and opinion polls reveal that workers have limited confidence in its capacity to protect their interests. Meanwhile those who have attempted to organise alternative, independent labour groups have been arrested and accused of "counter-revolutionary activities" or "disturbing public order". Many have been sentenced to prison terms or assigned, without charge or trial, to periods of "re-education through labour".

In Shenzhen in May 1994, three migrant workers (Kuang Lezhuang, Li Wenmin and Liao Hetang) who tried to register an independent news-sheet called *Workfellas Bulletin* and to set up a night school for other migrant workers were detained and never heard from since. Taxi drivers in the Special Economic Zone of Zuhai near Macau have been detained since January 1996 because they took part in a strike with other drivers. Hu Yunquan, Zheng Shaoqiang and Chen Rongyan were accused of "seriously disturbing social security and road traffic" and were given terms of between one and two years of "re-education through labour" without any trial. In Beijing, labour activists such as Sha Yugang suffer repeated periods of short term detention because they try to register independent labour unions.

Indonesia also has only one officially recognised trade union. Dita Sari, the leader of an independent organisation working on labour rights, the Indonesian Centre for Workers' Struggle, was arrested with two colleagues during a labour demonstration in Surabaya in July 1996. Since her arrest, Dita's labour activities have been linked to attempts to revive communism in Indonesia. Still in custody, she is now facing charges under the Anti-Subversion Law, which carry the death penalty, as well as under legislation which punishes with imprisonment the expression of "hatred" towards the government.

In Hong Kong, labour activists who campaign for higher standards of safety in toy factories, especially factories established just north of Hong Kong near Shenzhen, were harrassed for holding a demonstration in January 1996 near a Toy Fair. Leaders of that demonstration have been convicted of "disturbing the peace" and are currently appealing the judgment.

As economic change opens up disparities in wealth between countries and regions, and shifts in production create surpluses and shortages of labour, patterns of **migration and people movement** are also changing.

APEC: Human rights and development

High rates of economic growth and expansion in the services sector in many industrialised and newly-industrialised countries has increased demand for educated and skilled labour, drawing more and more women into the workforce. As a result, a lucrative market has developed for foreign women domestic workers in the area of housework and childcare. For many developing countries in South and Southeast Asia, the export of women's labour has become an important source of foreign exchange and means of labour absorption. These women crossing borders in search of work and income are a vulnerable group. Their contribution to the economy is often treated by host countries as informal and they do not always enjoy full legal protection from abuses such as rape, battering and maltreatment and illegal detention. The plight of female migrant workers around the world was brought into sharp relief in 1995 by the case of Sarah Balabagan, a Filipina domestic worker in the United Arab Emirates, who was sentenced to death, but subsequently flogged, for the killing her employer who had allegedly raped her.

With annual growth rates averaging above 7 per cent, the Malaysian economy is one of the fastest growing in Asia. Increasing prosperity combined with shortages of labour has seen a large influx of migrant workers from other Asian countries, particularly Indonesia, the Philippines and Bangladesh. Estimates of migrant workers, both legal and illegal, range from 1 to 2.5 million. Many of those that enter the country illegally end up in detention camps known for their ill treatment and harsh conditions. Reports of beatings, sexual abuse and medical neglect have emerged. Other workers find themselves vulnerable to abuse by unscrupulous employers and corrupt police and officials. When Irene Fernandez of the local NGO Tenaganita exposed conditions in the camps publicly in August 1995, she was charged with publishing "false news". Her trial has continued since June. If found guilty, she faces a prison term of up to three years.

Booming industry and construction in coastal Special Economic Zones in China are fed by many millions of migrant labourers from the poorer inland provinces. Those that find work are amongst the most vulnerable in the workplace, with the lowest, discriminatory wages and worst conditions. Victims of recent high profile factory fires have included young women locked into overcrowded, illegally-sited dormitories. Blamed for increasing crime rates, members of this "floating population" are easy targets for extortion, harassment, ill-treatment and detention. Many thousands of women and children are now acknowledged to be the victims of trafficking.

As development puts pressure on traditional uses of land and other resources, **indigenous people** have also found themselves in the front line of human rights violations in the name of development.

In Irian Jaya, the enormous copper, gold and silver mine owned by American company Freeport covers some 2.6 million hectares, including land occupied by five groups of indigenous people. Discontent over the social and environmental impact of the mine has flowed over into broader

APEC: Human rights and development

opposition to Indonesian rule. The resulting clashes in recent years between the local people and Indonesian military have seen killings, "disappearances" and torture.

In Australia, new native Title legislation introduced in 1993 was intended to provide for national recognition of indigenous land rights in line with the country's international human rights obligations. Land rights have long been at the heart of Aboriginal and Torres Strait Island people's pursuit of equality in economic, civil and political rights. The Native Title legislation, met with concerted opposition from powerful mining and farming interests, has failed to live up to many Aboriginal people's expectations. Meanwhile they are watching yet another generation of their sons and grandsons swell Australian jails, where they currently account for 25 per cent of all deaths in custody, while making up only 2 per cent of Australia's total population.

In Mexico, members of indigenous communities in a number of states, particularly Guerrero and Oaxaca, have been the victims of serious human rights violations. In September 1996, Rafael Garcia Santiago, a Mixteco Indian activist and member of an opposition party (PRD) was killed in Tlacoachistlahuaca by a local paramilitary group linked to the ruling party (PRI). Later the same month, Gregorio Alfonso Alvarado Lopez, a teacher and Indian rights activist in Chilpancingo "disappeared" after weeks of threats and intimidation by unidentified individuals.

In Canada, a group of peaceful Indian protestors from the Chippewa tribe demonstrating for their land rights at Ipperwah Park in Ontario in September 1995 were charged by police in full riot gear and backed up by snipers. One protestor, Dudley George, was shot dead in a manner that may have constituted an extrajudicial execution. Other protestors were badly beaten by police officers.

Elsewhere, economic change has unleashed new social pressures with which authoritarian governments are finding it difficult to contend. In China, for instance, the authorities are relying increasingly on the death penalty to manage emerging social problems such as crime, corruption and vice. China has steadily increased the number of crimes punishable by death from 21 under the 1980 Criminal Law to 68 offences in 1996, the highest of any country in the world. This expansion of the death penalty is directed primarily at non-violent economic crimes, such as tax fraud and illegal share dealing, which have emerged with China's economic liberalisation. Each year, an increasing number of people are sentenced to death for these new offences - in a country that already executes more people than the rest of the world put together. The growing population of migrant workers and vagrants in rapidly developing urban areas of China are especially vulnerable.

Some parallels can be drawn with the United States, where application of the death penalty follows a social and economic pattern. In the United States, the death penalty is disproportionately used against people who belong to economically and **socially disadvantaged**

APEC: Human rights and development

groups. Of the 346 executions in the United States since 1977, 44 per cent have been members of the black and ethnic minorities. Many end up being executed because they are too poor to hire their own lawyer and receive inadequate representation from the state. Socio-economic factors see a different value placed on the lives of different victims as well: 82 per cent of all executions were for the killing of a white, despite the fact that blacks are the victims of homicide in almost equal numbers to whites.

A further, forgotten economic and social dimension to human rights abuse lies in the practical consequences repression can have for the lives of its **victims' families**. Each day, as a result of arbitrary detention, enforced "disappearance", summary and arbitrary execution, families are left without financial support and livelihood. Women whose partners have been "disappeared", for instance, are effectively widowed but unable to claim state or other benefits because their husbands have not been declared dead legally or officially.

In South Korea, women belonging to the human rights group Minkahyop have campaigned tirelessly for the release of their male relatives held under the country's National Security laws. They provide counselling and practical support to wives, mothers, girlfriends, sisters and daughters left bringing up families without the support of their loved ones. In Indonesia, many victims of human rights violations do not seek redress because of fears that their livelihood may be threatened. In one such case in January 1995, a woman who had been detained, beaten and tortured after she and others complained to Indonesia's national human rights commission about the proposed demolition of their houses, withdrew her complaint after police threatened to make life difficult for her disabled child.

These examples highlight the way in which economic, social, cultural, civil and political rights intersect. The right to food and the right to freedom cannot be separated. When people risk imprisonment, torture, summary or arbitrary execution or "disappearance", they stand no chance of enjoying fully their socio-economic rights and the benefits of development.

A call to action

In this age of globalisation, the very framework in which we live is undergoing a revolution. While the nation state remains the fundamental constituent element of the international community, its role is changing in the face of the global marketplace. Business is assuming greater control and responsibility for more and more aspects of our lives. Frameworks of human rights - cast largely in terms of the individual's relationship to the state - are facing an unprecedented challenge.

While **states** may be withdrawing in the face of these new forces, they cannot be allowed to

APEC: Human rights and development

abdicate their responsibility to protect and promote human rights - both of their own citizens and internationally. As a signal of this commitment they should ratify both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and give effect to these commitments through national law and programs. Governments should at all times ensure that their national and international policies, including in areas such as trade and development assistance, promote all aspects of economic, social, cultural, civil and political rights for all members of society.

Governments should also recognise that individuals, trade unions and other non-government organisations have a key role to play in the advancement and protection of economic, social and cultural rights. To this end, governments should in law and practice, allow them the right to:

- defend the fundamental rights and liberties of others, as well as their own; to investigate and oppose such violations;
- to form or join national or international groups and associations;
- to communicate about and campaign against violations, free of persecution, violence or harassment;
- to use the law and institutions of state to defend human rights of individuals or groups
- to access inter-governmental human rights mechanisms, including the complaints mechanisms provided in many international human rights instruments.

Governments' responsibility to promote and protect all human rights extends beyond their international boundaries. Through their cooperation in inter-governmental fora, like APEC, they should develop mechanisms and procedures that enable monitoring and protection of human rights, including in the economic, social and cultural field. Article 3(3) of the Declaration on the Right to Development provides that "states have the duty to cooperate with each other in ensuring development and in eliminating obstacles to development." At the same time, it is essential that the integral role of human rights in the development process is fully recognised and further developed by governments and inter-governmental fora. This is especially relevant in the context of APEC, which professes to aim at the realisation of the full economic and human potential of the Asia-Pacific region. But to date, the fora for economic co-operation emerging in the region have rigorously excluded the economic dimensions of human rights. "Protection", be it of industries or the rights of workers and marginalised groups, has become a dirty word.

Business also shares in the responsibility for the protection and promotion of human rights: the

APEC: Human rights and development

Universal Declaration itself calls on "all organs of society", including business, to join in this task. International and national companies should:

- explicitly assess the human rights impact of projects and strategies, particularly as they relate to economic, social and cultural rights;
- use their influence to oppose the abuse of fundamental civil and political rights by states, especially where the pretext is either directly or indirectly business interests;
- develop mechanisms to monitor and maximise the enjoyment of human rights by employees;
- provide channels for the freedom of expression, association and assembly in the workplace;
- develop mechanisms by which employees or members of the local community and non-government organisations can bring forward complaints of violations without fear, to be impartially investigated and where necessary acted upon.

Finally, non-governmental organisations - as a core component of civil society in all its political, social, economic and cultural dimensions - have a critical role to play in reaffirming the indivisibility of human rights. While we all rightly focus on our own areas of concern, attaching priority to different issue and agendas, we should not reinforce the artificial divide between the political, economic and social rights. NGOs engaged in challenging the negative human or environmental impact of various models of economic development should fully utilise the language, framework and mechanisms of human rights protection in their advocacy and campaigning work. They play a front-line role as human rights monitors and defenders in the course of their struggle for alternative, people-oriented, sustainable development. So too, NGOs working in the context of civil and political rights can add their voice to the defence of the economic rights of the poor, dispossessed and marginalised and contribute to broader issues of social transformation and well-being. Just as human rights are indivisible and interdependent, so too must be NGO's work in their promotion and defence.

Amnesty International, as a truly Asia-Pacific NGO with over a quarter of a million members in 15 of APEC's 17 members, stands ready to engage in this all important task.

* * *