

**Key note delivered at the
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Human Rights and Development and Human Based Approach to
Development in ASEAN***

Excellencies, colleagues and friends, ladies and gentlemen,

Despite such a short notice, I am very pleased to address the very important gathering to discuss Human Rights and Development in ASEAN. As ASEAN is moving towards an ASEAN community in which development of member countries is critical, the discussions that we are going to do during the next two days are extremely relevant and I am honored to be part of it.

As we all know, the Roadmap for an ASEAN Community 2009-2015 which set out the direction that ASEAN is committed to pursue in order to build an “outward – looking organization in which people will be *“living in peace, stability and prosperity, bounded together in partnership in a just, democratic, and harmonious environment, dynamic development and ever-closer economic integration and in a community of caring societies”*¹. In setting out the goal for community building based on the three pillars namely political-security community, economic

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The paper is based on three research works done by myself.

1. Sriprapha Petcharamesree et al, Economic liberalism and financial conditionalities and its impacts on economic and social rights in Thailand, unpublished research work, 2004;
2. Sriprapha Petcharamesree ,A Rights –Based Approach to Development : The Cases of India and Vietnam, in C.raj Kumar and DK Srivastava, eds, Human Rights and Development : Law, Policy and Governance, LexisNexis Butterworths, Hong Kong, 2006, pp. 287-308;
3. Sriprapha Petcharamesree, Poverty, Development, Rights : Making Human Progress in Thailand, 2005, available at International Council on Human Rights Policy's Website.

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ASEAN, Roadmap for an ASEAN Community 2009-2015, ASEAC, Jakarta, 2009, p.5.

community, and socio-cultural community, ASEAN leaders emphasize on narrowing the development gap as an important task to ensure that the benefits of ASEAN integration are fully realized. ASEAN leaders also pledge that they “*resolve and commit to promote ASEAN peoples to participate in and benefit fully from the process of ASEAN integration and community building*”². In order to do so, I believe any development plans and programs being and to be implemented by ASEAN and its member states will have to be based on human rights approach. Needless to remind that the protection and promotion of human rights is included not only in the blueprints and but also in the purposes and principles of the ASEAN Charter.

What I am going to share with you here is based mainly on my own studies and researches on Human Rights Based Approach to Poverty Eradication and to development during the past decade. I have done some reviews and reflections on how development has been implemented in different countries both in different continents including Thailand. The examples that I am going to mention will be mainly on my own country, Thailand of which development characteristics are shared by most if not all countries in the region. My talk will be divided into 3 parts. The first part deals with some observations on development paradigm which has been dominating the development policies in Southeast Asia. The second part will look into how the human rights based approach has been perceived and whether or not it has been applied in development plans and works of those in authority. In the last part, I will offer some thoughts and reflections on what it means for me by a human rights based approach and how it should be realized.

The development paradigm in Southeast Asian countries.

The development paradigm adopted by the Southeast Asian countries has been more or less similar. From development perspective, Thailand is a not a unique case. Since 1950s Thai economy has dramatically changed. The trajectory of Thailand’s economic development, like that of other developing countries in the region, has been to adopt the model proposed by international financial institutions. To start with, the country underwent the initial step of imported-substituted industrial development, which reached its peak in the 1980s. Next was the promotion of export-oriented industries, accompanied by concrete measures to offer to domestic and foreign investors numerous incentives.

² Op Cit.

From 1959 onwards, Thailand's annual GDP increase averaged 7 - 8 % and never fell below 4 % until recently. The pace of economic structural change was gradual at first then became more accelerated following the implementation of the 5th National Economic and Social Development Plan. Looking from growth perspective, the development plans used until now could be considered successful. Thailand achieved high growth rate which sustained over four decades. The average income multiplied several times. Thailand was transformed from one of the more backward and agrarian countries into a candidate for NICs.

However, the development strategies carried out by the Thai governments produce consequences which have been harmful to the poor. It is damaging because

1. The State's policy to promote large scale business through cash crop production with the aim to transfer the surplus of the agricultural sector to urban industrial sector has resulted in negligence of rural development, rampant destruction of natural resources, rapid growth of urban sector, and fast expansion of a mono-cash cropping areas. The network of roads and many other economic infrastructures have fueled these changes.
2. The promotion of large scale, exported-oriented agri-business has been seriously harmful for small farmers who have been further disadvantaged by the state's modest investment in agricultural sector as a whole.
3. Industrial sector has been growing very fast. New types of industries, namely petrochemical and electronic production, depend heavily on imported raw materials and technologies. Ownership of these industries remain largely in hands of transnational companies or foreign-dominated ventures, allowing foreign business to have control of industrial and agricultural production as well as service sectors. Several FTAs that Thailand has signed with economic partners have had adverse impacts on the poor, farmers, in particular. Foreign business became influential in shaping the future of domestic economy while technocrats took control of the formulation of policies and plan.
4. The growth and expansion of Thailand's industrial sectors are based on cheap labor. The government's support for skill development of the labor forces has been unimpressive. Meanwhile, the less-skilled labor has suffered from low wages, inadequate welfare benefits, and substandard working conditions. More seriously, more and more low income people, mainly women have been employed in informal sector in which

working security is not guaranteed. Among workers, undocumented migrants are in a very vulnerable situation and subjected to exploitation both by local and foreign employers.

What we see here is that the development policies and plans geared towards industrialization and modernization are biased in many aspects. Bias against the agricultural sector, leading to privileging of the industrial and service sectors. This is despite the fact that the majority of population still works in the agricultural sector. Bias in favor of the urban population, leading to a huge gap between the urban and rural. And, bias in favor of certain geographical regions over others in terms of development.

The financial crisis which hit the Thai economy in 1997 and spreaded all over the region offered as a good example of how fragile the Thai economy is. The latest flood crisis is just another example of the fragility of Thai economy. Prawase Wasi, a respected medical doctor and social critics, winner of Magsaysay award said some years ago that *“the crisis resulted from bad development policies which undermined the foundations of society. The idea of development which originated from the West promoted capitalism, industry, and greed. In so doing, it destroyed the “foundations of society” which were local communities, the natural environment, morality, and social harmony: “In search of big money, we do not hesitate to oppress, exploit, or destroy just about anyone and anything that we can turn into money”. This development created an economy which was “heavy at the top but shaky at the bottom” and eventually collapsed...”*³

Since the 8th development plan, there seems to be a paradigm shift in policy formulation. Both the development plans and the constitutions of Thailand are considered to be positive to civil society to play their role. It has not been always easy, though, under the shaky political context.

In most of the countries in Southeast Asia, poverty eradication has long been made the major thrust of development plans. All governments claimed to committed themselves to tackle the problem through policies, programs and projects. In many cases, those programs and projects were supported by bilateral and multilateral organizations and their own budget. Much resources have been invested but poverty remains.

In the preface of the OHCHR Guidelines on A Human Rights Approach to Poverty Reduction Strategies, it was reiterated that *“Poverty can not be*

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Pasuk Pongpaichit and Chris Baker, *Thailand's Crisis*, Silkworm Books, Chaing Mai, 2000, p.11

banished without the realization of human rights".⁴ The realization of rights depends on many factors including political, economic, social and cultural ones. In Thailand, it seems that positive factors which would be conducive to the realization of rights are available. We have more or less a so called democratic constitution in which rights, liberties, and dignity of people are enshrined. The development plans provide rooms for participation and empowerment. The strategies laid down in the development Plans prescribe the establishment of good governance at all levels of the society, consolidation of a strong social foundation, and economic restructuring for balanced and sustainable development. The terms like decentralization, empowerment, participation, and even rights are used here and there. The "populist policies" used by recent governments do not suggest that the Plans and the constitutions have been well interpreted.

How a human rights based approach has been perceived and applied in Thailand and in the region?

The idea of a rights-based approach to development is not new to UN agencies, some international institutions such as the World Bank and many international development agencies claimed to have applied. The concept and policies were introduced since 80s. While there is an increasing convergence in terms of concepts and interpretation of a rights based approach, the implementation varies due to the local context and understandings as well as capacity of personnel.

Some years ago, I did a small research project examining the perceptions of human rights based approach of different actors in development namely government officials, development NGOs, technocrats, and academics. For some "*RBA is like the five precepts. It is something that we should up hold.... Participation, self –determination can not be used as a means but it could be a goal. There is a need for state intervention. People can not enjoy rights if they are left to be on their own*" (Pol.Maj.Gen.Somchart).⁵

⁴ OHCHR, Draft Guidelines : A Human Rights Approach to Poverty Reduction Strategies, in the preface, September, 2002.

⁵ Sriprapha Petcharamesree, Poverty, Development, Rights : Making Human Progress in Thailand, 2005, available at International Council on Human Rights Policy's Website.

For others “A rights-based approach can not be effectively implemented under patronage system and patron-client relationship”(Werachai, ALRO).⁶

These two different views reflect the existing tension in Thai society. Even though most if not all interviewees support the RBA in one way or another, there is a sense of trade off between using rights as a means and rights as merely an end

We have to admit that the understanding of RBA could start with the sound understanding of the concept of rights. Most of the interviewees suggest that the level of understanding of rights in Thai society is still low not to mention a RBA. The term rights could be said in different ways in Thai language. The fact that people do not understand the term does not necessarily means that rights does not exist. Human rights is beginning to make its way in Thai society though degree is not as high as one might expect.

The essential idea underlying a human rights approach to development is that

1. policies and institutions for development should be based explicitly on the norms and values set out in the international law of human rights”.⁷
2. The RBA prescribes accountability at all levels, local, national, regional and international. It is rather difficult to make officers accountable for the people because their performance is usually evaluated within their own hierarchy. Unfortunately, evaluation made by the people and/or community does not count in the promotion for officers.
3. Accountability is closely related to decentralization. “**Decentralisation** is complete only when complemented by **democratization** because otherwise there may be little(if any) advantage over well-conceived **deconcentration**”.⁸
4. We have to also take into account that accountability at regional international levels is as problematic as at local and national levels. Only recently that international institutions / organizations like WTO, the World Bank, IMF, etc, are scrutinized by some groups of well-informed movements across the globe. There is no

⁶ Ibid.

⁷ OHCHR, Draft Guidelines, Op cit, para.3.

⁸ Michael H.Nelson, Thailand : Problems with Decentralisation ? in, Michael H.Nelson ,(ed.), Thailand’s New Politics, op cit, p.218.

established system of check and balance between international systems and the states. This is not to mention the fact that state itself is too weak and too reluctant to make transnational corporations accountable to them. More seriously, respect accorded to national sovereignty makes the scope and possibility for regional and international actors to introduce and improve respect to human rights limited.

5. We recognize that participation is the key to RBA. At all levels participatory approach helps improving communications and understanding among all actors and partners. But participation is a process which is time consuming. The result-based approach introduced by many regional and international organizations/institutions seems to be well adopted by the government. It is in some way incompatible with rights-based approach of which result might not be tangible and difficult to evaluate.
6. It's important to emphasize that participation requires rights to information, freedom of expression, and freedom of assembly. Under the explicit and implicit control of media and a one-way communication exercised by the governments it is unlikely that participation can be meaningful. Also are there different levels of participation ranging from being informed to taking part and being part of decision making system. Participation in many countries, though much progress has been made, seems to be limited to informing people on what would be done for them. Attitude of majority of officials remain conventional. They take the role of planner, implementer, monitoring and evaluator. Communities have little rooms for participation and they are seen as (passive) beneficiaries. Relationship between providers and beneficiaries is still very strong and it gives no space for social capital development.

Process and Substance in the Rights Based Approach to Development

As already said a RBA not only requires a long process for itself is a process but is also difficult to monitor and evaluate. This is not to say that a RBA does not offer any value added to development or poverty reduction strategies. It is conducive to the changes of policies, laws, and programs. It helps accelerate changes in attitude and behaviors of officers and people concerned. RBA pushes the government to improve the quality of public services and make them available to all. RBA creates opportunities for people who might be otherwise excluded from the

process. There are some elements which have to be taken into consideration when implementing a RBA;

1. It has to be made clear here that the process can't be dictated from above; it can't be top-down. There must be participation and understanding at each stage. This is not simply a matter of rights based approaches to development. Projects succeed where the beneficiaries feel ownership and the ownership comes through active participation. The rights based approach simply makes the case more strongly; it is impossible to pursue the goal of empowering people to claim their rights without the participation of those individuals.

2. The internal culture of an organization that is implementing the rights based approach, must be guided by rights-based thinking as well. Certainly, on one hand, an authoritarian, top-down structure would seem ill suited for promoting egalitarian, participatory structures in society. Strong evidence of gender bias, lack of inclusion, intolerance, or discrimination inside of the organization would add an element of hypocrisy to their presumed goals. On the other hand, it is fanciful to imagine that an organization would be able to operate strictly according to human rights principles. Internal democracy must give way to organizational imperatives. All this, however, can occur in an open and spirited environment where staff are encouraged to air their concerns, improve their understanding, and seek review of disputed decisions.

3. Another important underlying issue that many development organizations face is the extent to which a rights based approach relies on the human rights laws and institutions that have developed internationally. There is no easy answer, except to say that it is unproductive to rely on international law and institutions entirely, but destructive to ignore them completely.

It is important to note that there has been an important evolution in human rights laws over the past decade to extend beyond traditional (minimalist) state obligations and evolutions in advocacy to extend beyond "naming and shaming" violators of rights. There are efforts to pin obligations on corporations, intergovernmental associations, and even humanitarian organizations. To paraphrase Amartya Sen, rights inhere in the individual and obligations spring from anyone in a position to provide them.

4. Basic to the rights-based approach is the principle that people are at the center of development. Development, itself, must be understood in terms

of people's free and meaningful participation in the decision making process, and their enjoyment of its benefits. Free and meaningful participation requires a "political space." For a democratic regime, this space is assumed. In a non or not so democratic states, the space for free and meaningful participation is highly circumscribed both in law and practice. To make the people's participation of the most marginalized and disadvantaged meaningful and to make the government accountable, it is thus crucial to focus on information and legal literacy .

5. Actors in Implementing a Rights-Based Approach. The challenge for agencies working on a rights-based approach is two-fold 1) how to amplify the voice of the poor and 2) how to make those in positions of authority responsive to the concerns of the poor and accountable for their commitments to them. Those in positions of authority include public authorities, civil society and market actors. These three play roles at international, regional, national and local levels. The public authorities have obligations under international human rights agreements and declarations in regard to economic and social rights. The other two actors are not as clearly bound by legal obligations, but public accountability and internal mandates increasingly subject them to similar obligations. It is crucial to take into account the three levels of authority and to address them at the local, regional and global levels.

6. Definitely, the rights-based approach requires a paradigm shift. Poverty may be the result of exclusion, but targeting poverty does not necessarily end the exclusion. Moreover, by defining the problem as one of poverty, it favors solutions that involve alleviating the symptoms. If we agree that poverty represents a set of social relationships in which people are excluded from participation in the normal pattern of social, political and economic life, we definitely believe that people are poor for they are excluded. In order to tackle the poverty issue, we may need to refocus and reinvent social intervention. We may have to consider redirecting and reframing the policy and philosophy from fighting against poverty to fighting against exclusion.

Conclusions

When talking about a rights-based approach, questions are not so much relate to problems of ideology but the particulars of a fast changing, quickly industrializing society in which short term goals in development may come at the cost of entrenching or exacerbating marginalization of certain groups of poor. We should be vigilant to ensure against the

remarginalizing of vulnerable groups or the bolstering of destructive tendencies in industrialization and globalization.

The rights-based approach is feasible in all countries regardless of political regime; but it would have to be developed locally, without a predetermined structure. We may need to test the waters and be willing to continue or to back off where necessary. Not everything would change. In addition, the transition from basic-needs to rights-based approach requires conceptual adjustment. In rights-based approach, it is necessary to define beneficiaries and the nature of their needs but that is not enough. Beneficiaries must be recognized as active subjects and claim-holders of development and rights. They need to know the duties and obligations for those against whom their claims are brought. There must be also a balance between service delivery and the rights-based approach.

The operationalization of the human rights approach to development is a continuing process and exercise. It needs integration of the body of rights from the perspective of the individual's participation in development. It needs to take into consideration both political, civil, economic, social, and cultural rights. In general, a rights-based approach in the country tends to focus on economic and social rights. It is true that material conditions are essential for the realization of enjoyment of rights. However, considering the indivisibility and interdependence of rights, it is important that minimum political conditions are adequately established.

Implementing a rights-based approach requires understanding of both human rights and development. It is always easier to claim that policies and programs are grounded on a rights-based approach. The most importance is not the term, rather how to implement and where the people is placed in the process.

Poverty is about deprivation and exclusion; development is about distribution of resources and access to services while a **RBA is about distribution of power and change of relationship**. Some experiences show that “*in a society which is becoming ever more individualized, poor people alone don't stand a chance. For the poor, the collectivity of the communities they live in, is an important survival mechanism, which helps them meet needs and resolve problems they can't individually*”.⁹ To strengthen this collective force we have to make communities and their networks the core actors, to shift supply-driven to demand-driven, to

⁹ CODI, CODI Update, Special issue on community upgrading in Thailand, Issue No.4, June 2004.p.13.

allow people to choose their own helpers, to promote diversity rather than standard unity in solutions, to change the government's role, and most importantly, to let people control their own destiny both at individual and community levels. People and communities are the platform for RBA. RBA is not much about "having", rather, it's about "being".