

THE ASIA PACIFIC AFFAIRS JOURNAL

HUMAN SECURITY

CHINA AND HUMAN SECURITY

AN INTERVIEW WITH
FORMER ACTING U.S. AMBASSADOR DAVID RANK

A 'RISING MOON' FOR HUMAN RIGHTS IN KOREA?

WON JANG

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China in the Xi Jinping Era

Interview with

Professor Andrew Nathan, Class of 1919 Professor of Political Science

November 13, 2017

Conducted by **Christopher Franklin**

School of International and Public Affairs, MIA '19

APAC JOURNAL: As you know, the president will be returning from a 13-day, five country Asia trip. The countries that President Trump will be visiting are South Korea, Japan, China, the Philippines, and Vietnam. What do you believe Trump has been able to achieve from his visit?

NATHAN: I'm afraid he hasn't been able to accomplish anything structural that really solves problems. As best as I know, he has been able to cultivate good relations with the leaders of these different countries. Particularly in China, he has been able to establish goodwill. As well, he has smooth relations with Abe and the leader of South Korea despite the fact that on the surface of their relationship lies some conflict. He concentrated a lot on the leader-to-leader part of things, but in my assessment, this does not really push the ball forward further down in terms of some of the problems that we face [such as] North Korea. The Chinese are going to assess the North Korean problem from the point of view of their own interest. They do not see why the North

Korea situation has to be treated as a life and death crisis. They understand that Kim Jong-un is not going to launch a nuclear attack on the United States or even Japan or South Korea, because Kim is not that crazy. Therefore, it doesn't have to be this incredible crisis that Trump makes it out to be. The fact is that the United States gambled on forcing North Korea to give up its nuclear weapon program and the United States lost. We have already lost and need to come to terms with the fact that we now have a situation with North Korea which is a mutual deterrence which is relatively stable. Of course, the North may use this nuclear umbrella to engage in provocations for the purpose of getting the United States to enter into negotiations. The North Koreans want stability with their regime in place as well as their nuclear capability recognized. So why is this a crisis? It's a crisis because the United States lost and the American leader won't tell the American people that we gambled and we lost, and that we have to live with a nuclear North Korea. And so, from the Chinese point of view, if

the U.S. wants to have a crisis, that's America's crisis. China is not particularly happy with having a nuclear power on its border nor with Kim Jong-un, but Chinese leaders are realists who realize that this is how world is, and that Kim currently has the weapons. If the Chinese decide to ramp up sanctions on the North Koreans, that will be for reasons of their own and not because Trump went over there, had a smooth meeting, and flattered Xi Jinping.

APAC JOURNAL: Well in terms of flattery, I think it went the other way and that Xi succeeded more in flattering Trump.

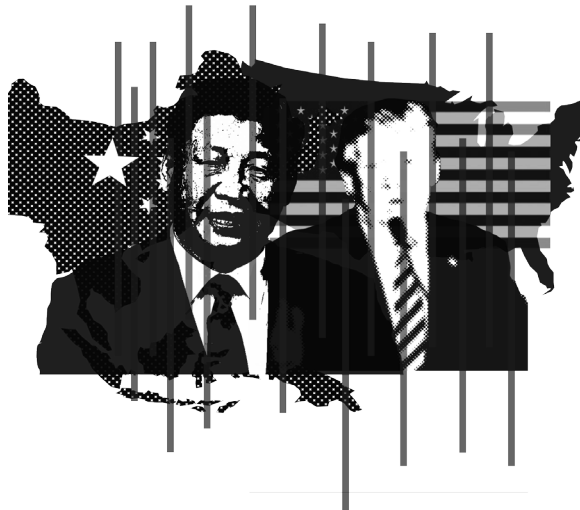
NATHAN: Well, that would also be accurate to say since they understand that he responds well to that. The consequence of both the North Korea play and Chinese flattery in the form of these so-called \$250 billion worth of deals (some of which were agreed upon in the past, agreed to be signed in the future, or already existing deals) is that Trump hasn't really addressed the U.S.-China problem. At this point, I would

have to agree with some of the Trump officials and hardliners such as Steve Bannon that the U.S. trade relation with China is unfair, which is not an insight limited to Bannon or Republicans. It's something that is known to Democrats and members of the business community. The Chinese market is heavily protected against U.S. investments, sales, and exports.

APAC JOURNAL: There are also accusations that China is a currency manipulator.

NATHAN: Well that's something I don't agree with, but [I believe] the intellectual property theft and the Chinese attempts to buy a huge amount of influence with Wall Street and the banking industry in the United States so that you have a financial lobby that does not want to confront China is a big problem. The solution will have to be long, hard negotiations with China over a bilateral investment treaty (BIT). But nothing was said about that during this visit and Trump certainly didn't appear to raise the matter during his meetings in China. The U.S. should have stayed in the Trans-Pacific Partnership, so it seems to me that Trump really didn't walk away with anything. And on the battleground for influence in Southeast Asia between the United States and China, Trump walked away

from a meeting with Duterte not having achieved anything. The Filipinos and the other Southeast Asian countries are going to look at reality and the reality is that China is closer, wealthy, and growing militarily. And the reality on the American side is that we basically don't have a strategy in Asia. There was the Pivot to Asia strategy. Now, there's a new slogan about the Indo-Pacific, but so far, I don't see a strategy. And Trump doesn't seem to be a strategic person.



Trump made a remark in China that struck me as something the "real Trump" would say. In reference to the North Korea issue, he said, "It will work out... it always does." It seems to me that this is the real Trump since he's gone through his whole life having bankruptcies, debt, two messy divorces, dirty business deals in the New York real estate market, money laundering (whether he knows it or not), questionable involvement with beauty pageants, and gambling

at Atlantic City. And when you look at it, it's always worked out. He's never gone to jail or suffered a major loss. So I guess he learned a lesson in life that if you stay around long enough, wave your pistol around one minute, and then kiss up to the right person the next, then things will eventually work out. But now, he's playing on a different stage with nuclear weapons. This could be dangerous. I imagine they have been negotiating throughout the whole time. Joseph Yun, Special Representative for North Korea Policy, has been traveling around. Tillerson mentioned that there were talks or channels of communication with North Korea. So I guess that Trump has his public game which is always to prioritize his audience in Middle America to show that he's tough.

APAC JOURNAL: What did you think of

Trump's more recent comments in Beijing when he said that he could not blame the Chinese for benefiting from the U.S.' poor trade deals with China in order to help its own citizens?

NATHAN: Well, I would have to agree with him on that point. It's just economic competition. It's not the job of China to help the U.S. This is the Hobbesian world of anarchy. But I don't think it was good for Trump to say it like that. It's humiliating and undignified. And it wasn't

that the previous administrations agreed to these trade deals out of stupidity or treachery, but they had a strategy to open the U.S. market to the Chinese, which is forming a Chinese middle-class. Afterwards, China would become a democracy and liberal, and the U.S. would be able to engage China. Now, U.S. engagement hasn't worked out and you could say that it was the fault of previous administrations. And so, to answer your question, there is a need to rectify those trade deals and the right way to do that is through the TPP, fair trade deals, bilateral investment treaties, and the Committee on Foreign Investments in the United States (CFIUS). However, the current relationship that we have with China is one that is hurting us. We need to eventually get into what will be a long and tenuous negotiation process, not a trade war, to open the Chinese economy and protect our strategic assets. The Congress is considering the adoption of a new law to increase the power of CFIUS and that will be good. We also need to protect our cybersphere from industrial espionage as well as other kinds of espionage.

APAC JOURNAL: At the 19th Party Congress, Xi Jinping was certainly vocal about the beginning of a new era for China. What would this new Chinese era mean and what implications would it have for the human security in the Asia-Pacific?

NATHAN: The rise of China is definitely an epoch-making event that changes the structure of power since China is now the number two economic power and is building up its military. So there is no doubt that there is a change that is occurring. But whether it is a change where China replaces the U.S. as a world power really depends on whether the U.S. wants to go down that path and I believe that under President Trump, the U.S. is choosing to do so. Under Trump, we are just throwing away our influence. But from the objective indicators of power, the U.S. is still the number one economy; the U.S. still has real soft power whereas China has fake soft power. There is an inherent attraction to U.S. culture whereas the Chinese are pushing it out through propaganda efforts and banning negative information about China domestically and overseas. And we still have a military capability which is global and technologically far more advanced than China's. Therefore, the sun doesn't have to set on the U.S. dominance. And in a multipolar world, the U.S., China, Russia, Japan, and the EU will have influence and China will not be a superpower.

Now, to the second question. China's power is rising, so what do they want? You can read Xi Jinping's speech from the 19th Party Congress where he is incredibly vague. But he talks about the rejuvenation of the Chinese nation, and the Chi-

na Dream with China coming closer to the center stage of the world. So what is this all about? One theory would be that China intends to eventually to web the globe with its military apparatus. But I don't personally hold to that idea and I don't see why they would or could do that. Another view is that China wants to impose a Chinese style of governance or a China model around the world. But then again, I am skeptical because the China model is not necessarily something that other countries can use and I think China wants to merely censure anyone in the world who says bad things about China. Yet, that's not quite the same thing as having a global ideology. As long as China can shut up its critics, then they will allow countries to do as they like. I see Chinese foreign policy as more defensive. They want to defend the regime's stability against the rise of the Chinese middle class, the possible break away of Tibet and Xinjiang, the instability in Hong Kong, the separatism of Taiwan, and possible encirclement by South Korea, Japan, Vietnam, India, Central Asia, Afghanistan, and Pakistan. But they have a lot of problems of their own so when it comes to being involved in Africa, Venezuela, and the Middle East, I think that China is acting out of concern for its energy security. The economic growth of China, by and large, is a good thing for human security especially at home in China.

APAC JOURNAL: But there's also a rising income inequality gap...

NATHAN: That's true, but everyone is essentially economically rising upwards. However, you have a few people at the top moving much faster and hence the inequality gap. But when it comes to Chinese influence in Cambodia, Burma, Laos, Greece, and Macedonia, there are very mixed results for how China has economically helped people of other nations. When they invest in a railroad or a mine in Burma, there is a displacement of people, the pollution, the human rights issues, and then the positive development that comes at the end if the project succeeds. But if you look at the impact on human security with institutions such as the IMF, USAID, and the World Bank, the results are very mixed. Western development agencies through the UN have gotten on-board the human rights approach to human development in the last 30 years, which gives attention to the human security impact of building a dam. But the Chinese agencies don't seem to be as enthusiastic about this approach. They do not include it in their discourse nor do they act on it. But then again, I'm not sure if the World Bank does a great job to the human rights approach of human development either. The Millennium Development Goals or the Sustainable Development Goals of the UN uses

the language of human security, but when it comes to the actual impact of building a dam, it doesn't really keep track of the environmental damage or impact on human life. But to put it simply, I think that the Chinese impact on human security is mixed just as anyone else's (i.e. the U.S, USAID, IMF).

APAC JOURNAL: Do you think that China will be a responsible great power in the future? When you have drug wars that are occurring that in the Philippines, the forced displacement of the Rohingya in Burma, or other humanitarian crises, do you think we will see China play a more active role?

NATHAN: To take the drug killings in the Philippines, I don't think China cares since they have a policy that emphasizes not placing judgment on countries that are recognized as sovereign nations. But I recall that there was a Chinese official that praised Duterte for his drug war. As for working with the United States to resolve the issues, I don't see the U.S. taking strong measures to handle the situation and I don't think we would want to work with China and the same vice-versa to solve the Rohingya crisis in Burma. The Chinese generally see this as their problem and not a Chinese problem. But there are many ethnic groups in Burma and one of them are ethnic Chinese. So China has been seeing many more members of this ethnic group fleeing across the

border into China as refugees. Under this situation, China will begin to complain because the refugee crisis is now affecting them. But with the Rohingya who are fleeing southwards toward Bangladesh, it's not their problem.

APAC JOURNAL: How does the United States put pressure on China to resolve issues in North Korea and the South China Sea? Can these issues be resolved peacefully or will the U.S. have to live with North Korea?

NATHAN: My view is that we have lost and that the North will eventually put a nuclear warhead on a ballistic missile and that we have to accept it. Afterwards, we need to begin negotiations. We don't want to admit it, but it will eventually happen. As for China, the Chinese want the U.S. and North Korea to negotiate and it has sought to facilitate these talks through the Six Party Talks. However, we are going to have to sit down without any conditions. But again, we will have to recognize North Korea as a nuclear state. And on the South China Sea, China has built these seven islands. Some believe we should have just bombed the islands, but maybe that wouldn't be a good idea. The best approach that we can do is to continue freedom of navigation and support the several regional claimants that dispute China's maritime claims. 🌐

Does China's Ecological Migration Project Comply with International Standards?

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“When a man moves, he stays alive; when a tree is moved, it ends up dead,” reads a Chinese proverb.¹ This is the logic behind one of the largest government-sponsored migration projects in the world: the poverty-alleviation and ecosystem preservation migration project in Northwest China. Since 1983, the Chinese government has undertaken specific measures to resettle populations living in the “ecologically-fragile” central and southern part of Ningxia Hui Autonomous Region such as Xihaigu, to the north (destination region) in order to lift them out of absolute poverty and protect the gradually degrading environment. Xihaigu, infamous for drought, water scarcity, and desertification is one of the poorest regions and most uninhabitable places in China. According to Ningxia Hui Autonomous Region Development and Reform Commission, the 12th Five-Year-Plan (implemented between 2011-2015) has successfully resettled 50,000 people, lifted 200 villages out of absolute poverty, and reduced the number of people living in poverty by 121,000.² These “resettled” populations are often referred to as “ecological mi-

grants.”

Climate change and degrading environmental conditions due to overgrazing along with socioeconomic reasons are the causes behind the eventual migration or displacement of people living in the poorest districts of Ningxia. These people, whether voluntary or involuntary migrants, often have no choice but to resettle in order to provide themselves with better living standards and to restore the ecosystem. Some people are “self-initiated migrants” who voluntarily resettle in the north, where water resources are more abundant and soil is more suitable for farming and grazing, with little or no support from the government. Some willingly participate in the government’s migration plan to resettle entire villages designated as “absolutely poor” and receive government subsidies. Some are forced to resettle due to government policy and depend entirely on government subsidies and programs. Some refuse to migrate and receive threats from local authorities saying they will dismantle property or deny water pipelines, despite the already low living standards and acute need of infrastructure.³

The Chinese government has claimed that the migration projects are well planned government policies. They are crucial for achieving the Communist Party’s goals of transforming China into a “moderately prosperous society” by 2020, eliminating absolute poverty, and protecting the degrading environment in overpopulated areas.⁴ It also claimed that under current conditions, a quality living standard for the growing population is unattainable and that the population will be trapped in poverty in the absence of migration.

The international community tends to focus on the Chinese government’s preventive and coping mechanisms for dealing with rapid, short-term natural disasters such as earthquakes, cyclones, and floods because China is prone to such disasters and the subsequent displacement of people.⁵ In addition, the discourse on migration projects has focused mostly on how the government undertakes positive measures and adaptation actions to reduce poverty, provide an adequate standard of living, and protect ecosystems, and how the projects could be potential models used in the fu-

ture to combat climate change. However, the government's actual implementation of migration projects may not necessarily comply with international standards and principles, especially when they involve involuntary migration and minorities. Therefore, I will compare the government's actions with the Guiding Principles on Internal Displacement and discuss whether the government is fulfilling its responsibility as it claims. The Guiding Principles on Internal Displacement, recognized as an important international framework for the protection of internally displaced people (IDPs), are 30 standards detailing the rights and guarantees relevant to the protection of IDPs in all phases of displacement. Though not a binding legal document, the Guiding Principles reflect and are consistent with international human rights and humanitarian law and provide practical guidance to governments in their work with IDPs.

For the most part, migrants in the resettlement villages face improved living conditions, obtain higher incomes, and gain better access to education, public transportation, and infrastructure. Their new proximity to cities and urban areas also offer more job opportunities. Despite the positive changes, there are still major problems associated with the highly complex migration projects. I identify two major gaps in the government's actions and its legal

obligation according to international standards.

Authorities do not protect property left behind by migrants and the government policies seem to resettle populations permanently.

Principle 6(3) of the Guiding Principles states that displacement shall last no longer than required by the circumstances and Principle 21(3) requires that property and possessions left behind by IDPs be protected against destruction and arbitrary and illegal appropriation, occupation or use.

However, Ningxia authorities destroyed the property left behind by Ningxia migrants and instead used the land to increase forest acreage and conservation of water resources.⁶ Water and power infrastructure was dismantled. Those who refused to move and stayed behind are thus negatively affected by a lack of basic resources, such as running water, and government subsidies. As migrants arrived at their resettlement villages, their residence registration was also transferred to the jurisdiction of the destination region's local government.⁷ As their residence registration changes, migrants' resettlement in the destination region becomes permanent.⁸

Even though migration is intended to be "voluntary" to preserve the local ecosystem and allow the land to be inhabit-

able again, migrants in fact are left with no prospect of returning as their property is destroyed and land confiscated. Displacement, is therefore, "permanent" even when the environment may improve after 5, 10 or 20 years – the government has not yet provided scientific research or a timeline on how and when such areas are expected to recover and become inhabitable.

The government does not provide adequate resettlement measures and compensation to migrants and does not involve those affected in the planning and management of relocation.

Principle 7 of the Guiding Principles requires that all measures be taken to minimize displacement and its adverse effect where no alternatives exist and proper accommodation be provided to displaced persons – satisfactory conditions of safety, nutrition, health and hygiene, no separation of family members. It also states that information on displacement, compensation, and relocation should be guaranteed and free, informed consent should be sought, and the planning and management of relocation should involve those displaced. Principle 18 guarantees the right to adequate standard of living.

The government offers a standardized resettlement package to all migrant families. The standardized housing, land dis-

tribution, and subsidies however, do not meet the diverse needs of the migrants and therefore hardly provide sufficient accommodation. First of all, the government provides standardized houses for all migrant families. Families with larger households would find houses too small and crowded. Second, the land allotted to migrants is much smaller than what they previously owned – pre-migration per capita land is 4.91 mu, whereas post-migration per capita land is 1.68 mu.⁹ Though soil quality is much better in resettlement areas, the yield is insufficient to meet basic needs and the cost of irrigation farming (instead of low-cost dry farming in home region) is higher and more burdensome for most families.¹⁰ In some resettlement villages, the land is even given to external companies for cultivation, forcing migrants to look for jobs in other sectors. Lastly, although the government provides migrant families with land and housing subsidies, most of them still have to spend almost 20,000 yuan (a large sum for poor families) to cover the costs involved in resettling before receiving government subsidized housing.¹¹ In 2012, it was reported that the average income per capita for migrants increased to

5,800 yuan (a large increase in income), but the figure is still 20% lower than the average income per capita of non-IDP residents in the Yellow River irrigation area (the destination region).¹²

The migration projects also disproportionately affect the ethnic Hui minorities in China. A large portion of those living in the poorest regions and thus falling under the government's relocation plan are Hui Muslims. They have distinct religious and cultural practices and traditions different from the majority Han. Though the government has allowed them to practice their religion openly – unlike the Uighurs in Xinjiang – and has built mosques for them, it has not taken enough measures to ensure that their lifestyle and traditions are protected and that social tension is mitigated. Government-provided housing also does not take into account the specific practices and lifestyle of the Hui Muslims. For instance, the shower and toilet are built in the same room, an affront to the Hui Muslims.¹³ Additionally, the Hui Muslims were given greater autonomy in their home region and governed under different policies.

But as they move to the destination region, they fall under the administration of the local government, and therefore are governed by local policies. For instance, the family planning policy in some of the destination regions restricts the number of children per family to two, while Hui Muslims have been legally allowed to have three children in their home region.

I identify the above two points as the most obvious gaps between the government's obligations and its actions on the ground. Many measures taken by both the local and central government are poorly planned and implemented. They lack long-term planning, a scientifically-sound migration plan for the destination region, and sufficient housing and compensation mechanisms provided to affected populations. Some policies even contributed to serious problems in the destination region, including environmental degradation, overpopulation, and social tension between migrants and existing populations. The government will need to review and improve existing measures to truly “bring wealth” to all its people and “preserve” the environment as it claims. ☉

HEALING THE SICK:

Arguments for Criminal Liability Exemption of Persons with Substance-Related Disorders, or Mental or Behavioral Disorders due to Psychoactive Substance Use, in the Philippines

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The Philippines has gained international notoriety in the last two years, with the enforcement of the Philippine Government's War on Drugs. Since the launch of the Philippine National Police's (PNP) Oplan Double Barrel in July 2016, 7,080 drug suspects were killed and 64,269 drug suspects arrested.¹ These alarming numbers require the urgent revisiting and re-evaluation of the Philippine drug policy and related penal laws.

Should drug use always be treated as a crime, perpetrated by users with full intent and discretion? Is this deemed socially deviant behavior a result of individual depravity or is it a function of multiple factors, among which is the failure of society to ensure the delivery of basic social services, including the right to health? In light of the developments in medical science, the author argues that persons diagnosed as suffering from substance-related disorders, or mental or behavioral disorders due to psychoactive substance use, are mentally insane, and thus must be exempted from criminal liability.

The Criminalization of Drug Use under Philippine Law

In 2002, Philippine Congress enacted Republic Act No. 9165 (RA 9165), otherwise known as the "Comprehensive Dangerous Drugs Act." RA 9165 reinforced the Philippine Government's commitment and framework for addressing the worsening drug use problem in the country. Among its pertinent provisions are Section 11 (Possession of Dangerous Drugs),² and Section 15 (Use of Dangerous Drugs).³

Section 15 of RA 9165 clearly criminalizes drug use as it imposes the penalty of imprisonment and fine for repeat offenders. Section 15, however, attempts to balance the penalizing aspect of the law with its rehabilitative aspect by providing for the mandatory confinement of any first-time offender in a government rehabilitation facility. However, if the arrested drug user is also found in the possession of illegal drugs in the quantities provided for in Section 11, then the drug user shall be charged under Section

11 (possession), and not Section 15 (use). Therefore, a drug user who is arrested, will be imprisoned if found guilty of drug possession, regardless of the fact that the drug user is also found to be a first-time offender under Section 15.

First-time offenders are admitted to government rehabilitation centers under the Compulsory Submission Program (CSP), and are deemed to have served sentence upon release from the rehabilitation center. On the other hand, those charged under a different section of RA 9165 where the impossible penalty is imprisonment of less than six years and one day,⁴ are admitted to government rehabilitation centers under the CSP after the court approves a petition for commitment filed by the Dangerous Drugs Board (DDB). Accordingly, proceedings are suspended during confinement, and are resumed after rehabilitation. If the patient is found guilty of the offense charged after court proceedings are resumed, the time of commitment in the rehabilitation center is considered time served for the sentence

imposed, provided that the rehabilitation center certifies that the patient maintained good behavior during commitment.⁵ Conversely, absent the certification of good behavior, a rehabilitated patient who is found guilty of an offense under RA 9165 where the impossible penalty is imprisonment of less than six years and one day, may still be imprisoned after release from rehabilitation.

Arguments for Exemption from Criminal Liability

“Drug use” as understood in the Philippine context focuses on the act of consuming illegal substances, without regard to, or with limited consideration of, the mental condition of the user prior to, and during the act. Criminalization of drug use does not account for the fact that the act of consuming addictive substances is a mere symptom of substance-related disorders, or mental or behavioral disorders due to psychoactive substance use.

The American Psychiatric Association (APA) and the World Health Organization (WHO) in their respective publications, recognize substance-related disorders (APA) or mental and behavioral disorders (WHO) as mental illnesses. In 2013, the APA’s Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders⁶

(DSM-5) identified ten classes of substances which may cause substance-related disorders, namely: alcohol, caffeine; cannabis; hallucinogens; inhalants; opioids; sedatives, hypnotics, and anxiolytics; stimulants (amphetamine-type substances, cocaine, and other stimulants); tobacco; other (or unknown) substances.⁷

The substance-related disorders caused by these substances are divided into two groups: substance use disorders and substance-induced disorders.⁸ A substance use disorder⁹ is characterized by a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance-related problems. Substance use disorders may cause a change in brain circuits that may persist beyond detoxification (noted in cases of severe disorders) and is exhibited in repeated relapses and intense drug craving upon exposure to drug-related stimuli. On the other hand, substance-induced disorders¹⁰ include intoxication, withdrawal, and other substance/medication-induced mental disorders.

Meanwhile, for the substance-induced disorders of intoxication and withdrawal, DSM-5 identifies 4 criteria. Criterion A is the development of a reversible substance-specific syndrome due to the recent ingestion of a substance. Criterion B is the development of

clinically significant problematic behavioral or psychological changes during or shortly after use of the substance, attributable to the physiological effects of the substance on the central nervous system. Criterion C is the clinically significant distress or impairment in social, occupational or other important areas of functioning, caused by the substance-specific syndrome. Criterion D is the non-attribution of the symptoms to other medical conditions or other mental disorders.¹¹

On the other hand, in 2016, the WHO published the Tenth Revision of the International Classification of Diseases and Related Health Problems (ICD-10)¹² which included the ICD-10 Classification of Mental and Behavioral Disorders. The ICD-10 identified mental and behavioral disorders with psychoactive substance use. The psychoactive substances were: alcohol; opioids; cannabinoids; sedatives or hypnotics; cocaine; other stimulants, including caffeine; hallucinogens; tobacco; volatile solvents; other psychoactive substances.¹³

The ICD-10 specified ten clinical conditions that characterize mental and behavioral disorders caused by the use of psychoactive substances and their variations. These clinical conditions are: acute intoxication; harmful use; dependence syndrome; withdrawal state; withdrawal state with delirium; psychotic disorder; amnesic

syndrome; residual and late-onset psychotic disorder; other mental and behavioral disorders; unspecified mental and behavioral disorder.¹⁴

ICD-10 listed the symptoms of the clinical conditions an individual who has engaged in psychoactive substance use may exhibit. Among these symptoms are dependence syndrome, withdrawal state, and psychotic disorder.

Dependence syndrome is characterized by a cluster of physiological, behavioral, and cognitive phenomena in which the use of a substance or a class of substances takes on a much higher priority for a given individual than other behaviors that once had a greater value. Some symptoms that must be present during the previous year for a diagnosis of dependence syndrome include a strong desire or sense of compulsion to take the substance; difficulties in controlling substance-taking behavior in terms of its onset, termination or levels of use; physiological withdrawal state when substance use has ceased or been reduced.¹⁵

Withdrawal state is characterized by a group of symptoms of variable clustering and severity occurring on absolute or relative withdrawal of a substance after repeated, and usually prolonged and/or high-dose use of that substance. It can be an indicator of dependence syndrome, un-

less it is the reason for referral, and is sufficiently severe to require medical attention. Physical symptoms vary according to substance; psychological symptoms include psychological disturbances, and in cases of delirium, include clouding of consciousness and confusion, vivid hallucinations and illusions affecting any sensory modality, and marked tremor.¹⁶

A psychotic disorder borne out of psychoactive substance use is characterized by a cluster of psychotic phenomena that occur during or immediately after psychoactive substance use. Symptoms include vivid hallucinations, misidentifications, delusions and/or ideas of reference (often of a paranoid or persecutory nature), psychomotor disturbances (excitement or stupor), and an abnormal affect, which may range from intense fear to ecstasy. Patterns of symptoms may vary depending upon the type of substance, and the personality of the user.¹⁷

From the available medical evidence, it may be concluded that drug use is not an independent act. Drug use can be a component of substance-related disorders, or mental or behavioral disorders due to psychoactive substance use. Thus, when an accused is found to be suffering from a substance-related disorder, or a mental or behavioral disorder due to psychoactive substance use, any criminal act ensuing from the effects of the mental disorders

must be appreciated as insanity.

Insanity is an exempting circumstance under Article 12 of the Revised Penal Code, which provides that an insane person is exempt from criminal liability, and that the court must order the confinement of the insane person to a hospital or asylum.¹⁸ The Supreme Court, in the case of *People v. Madarang*,¹⁹ discussed the nature of insanity as a defense, under Article 12, thus:

In all civilized nations, an act done by a person in a state of insanity cannot be punished as an offense. The insanity defense is rooted on the basic moral assumption of criminal law. Man is naturally endowed with the faculties of understanding and free will. The consent of the will is that which renders human actions laudable or culpable. Hence, where there is a defect of the understanding, there can be no free act of the will. An insane accused is not morally blameworthy and should not be legally punished. No purpose of criminal law is served by punishing an insane accused because by reason of his mental state, he would have no control over his behavior and cannot be deterred from similar behavior in the future.

In other words, to be criminally liable, a person must have an understanding of the crime, and the legal and moral consequences of the crime. An insane person is afflicted with a

mental disease, and the mental disease has the effect of depriving the insane person of the ability to comprehend the criminal nature of the act or omission, and the liabilities that may arise from its full execution. There is no voluntariness on the part of the insane person. Thus, the insane person cannot be held responsible for the crime, in the same way that a person exercising full mental faculties would have been held responsible. As such, Philippine criminal law recognizes the existence of the crime, but it does not impose criminal penalty upon the insane person who committed the crime. Instead, and in light of the disease, and the safety of society, the law requires that the court mandate the treatment of the insane person in a hospital or asylum.

Substance-related disorders, or mental or behavioral disorders due to psychoactive substance use should qualify as bases for the insanity defense. In the case of *Verdadero v. People*,²⁰ the Supreme Court gave credence to Verdadero's defense of schizophrenia. Verdadero, who was charged with murder, exhibited features of schizophrenia before and on the day of the killing when he drank wine, slept poorly, and behaved violently. The Supreme Court concluded that Verdadero was indeed suffering from a relapse of schizophrenia, and that Verdadero could not distinguish right from wrong because of the relapse.²¹ In other words,

the Supreme Court held that Verdadero was insane, and that schizophrenia, which causes lack of impulse control and judgment, resulted in the complete deprivation of intelligence in Verdadero.

Although different substances consumed at certain quantities and over periods of time can have varying effects on individuals, there are features of substance-related disorders/mental or behavior disorders due to psychoactive substance use, which are analogous to lack of impulse control and judgment and can reasonably be expected to amount to the complete deprivation of intelligence.

Some DSM-5 substance-related disorders and their corresponding effects²² which could result in complete deprivation of intelligence are alcohol withdrawal; hallucinogen intoxication; hallucinogen persisting perception disorder; opioid intoxication with perceptual disturbances; sedative, hypnotic, or anxiolytic withdrawal; stimulant intoxication with perceptual disturbances.²³

These conditions cause afflicted persons to perceive reality differently. To illustrate, take the hypothetical case of a person who regularly uses methamphetamine and suffers from stimulant intoxication with perceptual disturbances. The person who is intoxicated with methamphetamine may

experience hallucinations. Suppose this person perceives an otherwise harmless passerby to be an aggressor and acting on this hallucination and the perceived need for self-defense, the person attacks the passerby and inflicts physical injuries. In this case, the person commits the crime of physical injuries. However, because the person is suffering from stimulant intoxication, the person was unable to distinguish reality from illusion, and right from wrong. The person thus acted without intelligence.

In sum, some cases of substance-related disorder, or mental or behavioral disorder due to psychoactive substance use cause afflicted persons to act based on their perceived reality, thereby exhibiting a lack of judgment necessary to distinguish right from wrong. When a case belongs to this class, the substance-related disorder, or mental or behavioral disorder due to psychoactive substance use, is the insanity deemed by law to amount to a complete deprivation of intelligence, which exempts the accused from criminal liability.

In addition, two constitutional provisions under the Bill of Rights support the position that certain cases of substance-related disorders, or mental or behavioral disorders due to psychoactive substance use, should be appreciated as exempting circumstances of insanity: the Equal Protection

clause, the prohibition against cruel, degrading or inhuman punishment.

First, Article 3, Section 1 of the 1987 Philippine Constitution²⁴ or the Equal Protection clause, ordains that similar subjects should not be treated differently, so as to give undue favor to some and unjustly discriminate against others; no person or class of persons shall be denied the same protection of laws, which is enjoyed, by other persons or other classes in like circumstances.²⁵ The equal protection argument for substance-related, mental or behavioral disorders due to psychoactive substance is that these disorders are mental diseases. In some cases, these disorders cause afflicted persons to act completely deprived of intelligence. When afflicted persons act without intelligence, their disorders satisfy the elements of the insanity defense under the RPC and belong to the same class of disorders that qualify as insanity. And as forms of insanity, the disorders should be exempting circumstances, and afflicted persons should be exempt from criminal liability.

Second, Article 3, Section 19 of the 1987 Philippine Constitution prohibits the imposition of cruel, degrading or inhuman punishment.²⁶ In *Maturan v. Commission on Elections*,²⁷ the Supreme Court reiterated that cruel, degrading or inhuman punishment pertains to extreme corporeal or psycho-

logical punishment that strips the individual of humanity. The Supreme Court elaborates on what qualifies as cruel punishment, thus:

Settled is the rule that a punishment authorized by statute is not cruel, degrading or disproportionate to the nature of the offense unless it is flagrantly and plainly oppressive and wholly disproportionate to the nature of the offense as to shock the moral sense of the community. It takes more than merely being harsh, excessive, out of proportion or severe for a penalty to be obnoxious to the Constitution. Based on this principle, the Court has consistently overruled contentions of the defense that the penalty of fine or imprisonment authorized by the statute involved is cruel and degrading.

In People vs. Tongko, this Court held that the prohibition against cruel and unusual punishment is generally aimed at the form or character of the punishment rather than its severity in respect of its duration or amount, and applies to punishments which never existed in America or which public sentiment regards as cruel or obsolete. This refers, for instance, to those inflicted at the whipping post or in the pillory, to burning at the stake, breaking on the wheel, disemboweling, and the like. The fact that the penalty is severe provides insufficient basis to declare a law unconstitutional and does not, by that cir-

cumstance alone, make it cruel and inhuman.

The constitutional prohibition against cruel and unusual punishment is the bedrock of determining appropriate penalties for criminal acts or omissions. It is a standard by which the “punishment” of confinement to a medical facility of insane persons found guilty of a criminal act, is measured against, and is found appropriate considering the unsound mental state of insane persons.

Clearly, condemning insane persons to imprisonment is flagrantly and plainly oppressive and wholly disproportionate to the nature of the offense as to shock the moral sense of the community. Insane persons who are completely deprived of intelligence do not act with full discretion because their moral compass is not functioning. Thus, the commission of the offense lacks moral depravity. Incarceration in a prison facility is a disproportionate penalty, which may amount to prohibited extreme psychological punishment against a person who is already suffering from insanity. The penal accommodation of exemption by insanity extended to insane persons, is thus in compliance with the standard of just, humane punishment. More importantly, the accommodation serves the society’s substantial interests of justice, reformation, and prime attention to health.

Recourse to the criminal justice system must be, in appropriate cases, supplanted with the wholistic medical treatment and social reintegration approaches. When an accused person is found positive for drug use, the accused person must be referred to a psychiatric or rehabilitation facility. At the end of trial, and regardless of the offense charged, an accused person diagnosed with substance-related disorder, or mental or behavioral disorder due to psychoactive substance use, must be delivered for confinement in a rehabilitation facility. By mandating rehabilitation instead of incarceration, the mental health problems of afflicted persons are directly addressed. The duration of confinement in the rehabilitation facility must be considered the “penalty” for the crime charged, if it is proved that the afflicted person committed the crime because of the substance-related disorder, or mental or behavioral disorder due to psychoactive substance use.

To further the goals of promoting mental health and treating substance-related disorders, or mental or behavioral disorders due to psychoactive

substance use, the Philippine Government must allocate funds for: (a) research regarding the demand for rehabilitation facilities, (b) construction and operation of rehabilitation facilities, (c) training and capacity-building for professionals performing services in rehabilitation facilities, and for community-based agents, (d) awareness campaigns in social institutions such as local government units, and the public school system. These integrative measures comprise a multi-aspect approach to managing substance-related disorders, or mental or behavioral disorders due to psychoactive substance use, and their societal consequences.

Drug use is not an isolated phenomenon deserving of individual blame. It is the result of various factors, among which, is the failure of the state to promote the health of the citizens. As such, the state has the urgent responsibility to pilot reforms recognizing substance-related disorders, or mental or behavioral disorders due to psychoactive substance use, as legitimate health concerns, and incorporating solutions based on medical science. 🌐

China and Human Security

Interview with

Former Acting U.S. Ambassador David Rank

November 9, 2017

Conducted by **Christopher Franklin**

School of International and Public Affairs, MIA '19

APAC JOURNAL: Considering that you once held the position as the highest U.S. diplomatic representative in Beijing, I know that you were on top of the most important political and economic issues. And, even though you're not in the role, I presume that you are still keeping up with the most recent developments in China with the 19th Party Congress. What do you think are its implications for the future of human security in China?

RANK: I think it's interesting that you frame it in terms of human security. When you look at what China has done in the last 30 or 40 years objectively, it has made huge contributions to human security by lifting hundreds of millions of people out of poverty. This is a remarkable achievement. A significant part of this accomplishment has simply been the Chinese state getting out of the way of the Chinese people. [Compared to when] I started working in China in 1990, the roles of the Chinese state and State-Owned Enterprises are vastly smaller than it was 30 years ago. And the role of the

private sector is vastly bigger. Both of these [changes] are the cause for the economic progress that we have seen [in China]. Thirty years ago, [China] was coming from a depressed baseline where it spent 1949-1978 "putting politics in the lead" - to use the Chinese saying - and artificially depressing the state of the Chinese economy. And that's the background to Xi's elevation. Obviously, he's the strongest leader that China has seen since Deng Xiaoping. So far, he has shown himself to be capable of accomplishing his goals. Although, I am not sure if centralizing power, decision-making, and authority into [the hands of] one person guarantees continued success in the future. In fact, to some extent, you get rid of feedback - or the possibility of passing up bad news-and increase the possibility of making bad mistakes. If the leader doesn't know what's going on at the working level, it impairs the ability to make good decisions. And that poses a risk to human development: you have a system and decision making [process] that are increasingly centralized. And almost inevita-

bly what comes along with that is bad information flow.

APAC JOURNAL: When you look at Xi, what do you think about his goals? Do you see them helping the masses of Chinese people or are we just witnessing high-level politics in China where he is just amassing power for his own benefit?

RANK: I'll be charitable and say that I think he sees [it] as two sides of the same coin. [Xi believes that] promoting his position also advances the interests of the broad mass of Chinese people. I think that he probably looks back at the [past] 30 years of performance and the last 70 years of Party rule, and uses it as evidence for those ends. When assessing a leader, especially a Chinese leader, I tend to take what they say at face-value and I think Xi was pretty clear at the Party Congress about what his goals are: increasing the reach of the Chinese military, expanding the economic progress that China has seen over the last 30 years, and increasing China's role on the world stage, in addition to addressing some problems that have clearly come up,

most notably environmental issues within China and globally.

APAC JOURNAL: Currently, U.S. President Donald Trump is in China holding discussions with Xi Jinping that will presumably focus on trade deals and North Korea. Where do human rights come up in their dialogue? From your experience, do you think that human rights could be raised on a higher level?

RANK: It's possible to raise our concerns in meetings, but ultimately the most effective human rights policy that we [America] have is to be a good example and to show that we are living out U.S. values and U.S. concepts, and that the act of living out our own policy both domestically and in our foreign policy [contributes to our success].

We can always do more in terms of raising [human rights], but I think it's important to be clear about our view and our belief that, not only do [U.S. values] reflect basic human values, but that they are good for a society. Repressing the expression of political views or personal views is bad for a country - that's my personal view. The U.S. is not weakened by the fact that we can protest our government and enjoy the rights that we have. We are stronger as a society and country, [because of it].

APAC JOURNAL: Another part of Xi Jinping's broader am-

bitions includes the One Belt One Road (OBOR) Initiative. Do you see this as something that helps just China or is it something that is actually meant to help increase [human security and human development] in the region as a whole? Moreover, are there any parts about it that you see as problematic?

RANK: Well, the One Belt One Road Initiative is [very] poorly defined. If you want funding from the [Chinese] central government, all you need to do is describe it as One Belt One Road. But there are a lot of positives with Chinese engagement in the region and the world. There are trillions of dollars of demand for investment in infrastructure. But if it comes in the form of unsustainable debt burdens or non-transparent transactions, then I would say that looking at OBOR skeptically is valid.

APAC JOURNAL: At this point, everyone knows that your decision to resign had to do with the U.S. decision to withdraw from the Paris Agreement. If the U.S. hadn't withdrawn, is there any other act that the U.S. could have committed that would have made you resign? Or was climate change an issue that particularly meant a lot to you?

RANK: Anyone who works for any organization for a long amount of time will disagree with some of the decisions it makes and, throughout my almost 30-year career, I was no

exception. I've disagreed with decisions made by presidents of both parties. But withdrawing from the Paris Climate Change Agreement seemed different. It was almost qualitatively different, from a national interest perspective, to set ourselves in a position against every country in the world. Even Syria and Nicaragua have signed on to the Paris Climate Change Agreement. We are the only nation state that is not signed on. And it's not a small agreement. This is an issue that unites the entire world; it is the global challenge that we face. I spent nearly 30 years working to advance American leadership, because I think U.S. leadership has been good for us and it has concrete benefits to the people of the United States. But from a policy level, I think [the U.S.'s withdrawal from the Paris Climate Change Agreement] was a terrible mistake. Part of the reason I went back to China one final time was that I've always worked to make things a little better for my kids. That's part of the reason why I've been doing this job for so long. And I also knew that it was likely the last assignment that I'd do in the Foreign Service. And so, to spend the last of my time in the Foreign Service working for something that I thought was a terrible idea for my country, my kids, and frankly for my own soul, I just couldn't do it. If I had another 20 years in front of me, I would have made a different calculation. But I think we will soon realize that where we

are is not good for us, and that we will have a lot of work to do to make up for time lost. In my own personal situation, I didn't have time to invest and so I tell people new to government or contemplating joining government, it's so important to be engaged.

APAC JOURNAL: So do you think that U.S. leadership is still valid in the Asia-Pacific? Or do you believe it is possible for China to step up and be a leader in providing human security?

RANK: The U.S. has had a powerful influence in the Asia-Pacific. The region welcomes us there because of the security that we provide and people are confident that we are not a threat to their security. But we're also welcomed in the region because Asia-Pacific countries have appreciated our commitment to free trade, open markets, and transparency. But when I look at the decision to pull out of Trans-Pacific Partnership (TPP)--not only did Trump run against it, but so did Hillary Clinton-- I think that the Obama Administration could have done a better job defending it especially in the run-up to the election. The strategy was to hope that Hillary won and somehow continued TPP.

But it seems the region isn't as concerned with the rise of China as they are with getting stuck in a military confrontation with the U.S. and China. They want the bipartisan, long-term,

across the board commitment that TPP and our other engagements represented.

APAC JOURNAL: Do you foresee a possible military conflict with the U.S. and China? Currently, there is an ongoing dialogue about whether the U.S. is caught in a Thucydides Trap with China. What do you think?

RANK: There are rules, institutions, and ways of operating that has served the U.S., the Asia-Pacific, and the world pretty well over the years. But the U.S. has taken a step back from the leadership role in maintaining those organizations and those rules and not just with the Trump Administration. China has a different view for how the world should be organized, which is understandable. But there are no new rules in place and moments of transition are risky. And so, I worry since transitional moments are when conflict is most likely to break out. But I'm optimistic that we will look at where our interests lie. And there seems to be a consensus among the American people that we benefit from being a leader in the world and that we will look at what has happened within the past decades that fed into it. It's easy to look at the benefits that come from global engagement and seeing those as different from the costs of being globally engaged. You sort of pocket the benefits and complain about the costs.

APAC JOURNAL: You previously served in Taiwan. As you know, the relationship between Mainland China and Taiwan is at the lowest that it's been in quite some time. What are the security implications?

RANK: First of all, I've spent a lot of time in Taiwan. As a recent college graduate, I received a scholarship to study there. It's one of the most successful societies in the world. It's competent, it's humane, it's efficient, and democratic. There are many positive things that I can say about Taiwan. But Taiwan and Tsai Ying-wen are in a difficult situation regardless of the U.S.'s role in the region. They sit very close to Mainland China which is not very happy about the current status quo. In my personal point of view, and I think that history has shown that, the status quo has served the region fairly well. Taiwan and China have prospered.

APAC JOURNAL: Is it possible that Chinese Communist Party may take drastic actions to further pressure Taiwan and achieve its re-unification with Mainland China?

RANK: China has the ability to pluck off many of Taiwan's diplomatic allies [as we saw with Panama] easily given the imbalance in economic and political weight. But, neither side would benefit from conflict. Dissatisfaction with the status quo doesn't mean that there is a better answer. ☉

A 'Rising Moon' for Human Rights in Korea?

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Park Geun-hye and the candlelight protests in South Korea were no doubt the talk of the international community last year. They were covered in all the major international media outlets around the world. *The Economist* chose South Korea as its runner-up 'country of the year,' just behind the winner, France.¹ Prominent columnist Shaun King at the *New York Daily News* posted a photo of Gwanghwamun Square – the epicenter of protests in Seoul – on his social media page and declared: "our streets in America need to look like this."² The protests were not only limited to the square, but spread nationwide and led to the impeachment of Park Geun-hye and early elections where Moon Jae-in was elected as the new president.

What were the protests really about? Anger at a corrupt government? Indignation at a privileged girl and family who pulled strings to get into a famous Korean university? Rage against the chaebol machine? All of these were critical issues and strong reasons for going out to protest, picket in one hand and e-candlelight app in the other. In the broad outline of things, it was about holding a government accountable to the electorate that had voted it in.

Governmental accountability had vanished the moment the scandal broke out and people became livid and poured out onto the streets.

The 'will of the people,' which in the Korean language is called *min eui*, was that Park Geun-hye should resign as soon as possible. The incompetence of Park's government led to a collective yearning for her impeachment. Various groups of society were brought together by their common desire for change. High school students demanded increased political participation rights, starting with lowering the voting age. Factory laborers highlighted their miserable treatment and pressed for reparations for injured workers, higher wages and better working conditions. A huge girl's statue was installed to symbolize the call to repeal South Korea's hugely unpopular agreement with Japan on "comfort women," which conferred unwanted compensation to South Korean women coerced into sex slavery during the colonial era.³

Whoever became the new president had to incorporate all these issue areas into his agenda. And when Moon Jae-in was elected, he had much on his plate. *Ancien régime* sins

such as corruption and cronyism were deemed as *juk pae* (roughly translated as 'deep-rooted evils') that needed to be stamped out. In his speech where he accepted the Democratic Party presidential candidate nomination, Moon claimed that "there is no ideological interest that precedes the interest of the people."⁴ This proclamation inevitably meant that when he was eventually sworn in as president in May 2017, he would not only have to oversee the transition from one government to another, but address the 'people's issues' that Park's government had turned a deaf ear to, including human rights. This essay is an overview of the first seven months of Moon's presidency, focusing specifically on his track record on key human rights issue areas in South Korea.

A Historic Briefing

On December 7th 2017, Lee Sung-ho, the Chairperson of the National Human Rights Commission of Korea (NHRCK), met with Moon to discuss the state of human rights in South Korea. In any country with an independent national human rights body, this would have been a mundane, uneventful meeting. However, what was historic about this special brief-

ing was that it was the first one in over five years. The last briefing was held in 2012 under the presidency of Lee Myung-bak who infamously had his Presidential Transition Committee look into the possibility of placing NHRCK under the control of the President's Office. This directly violated the Paris Principles of 1991 and UN Resolution 48/134 of 1993, which stipulates that national institutions for the protection and promotion of human rights "[must] be independent of the Government and not be subject to financial control which might affect its independence."⁵ Yet, Lee's successor, Park Geun-hye, did not do much better: she had not held any meetings with the NHRCK on human rights.⁶ In fact, during her presidency, the NHRCK went through an unprecedented three deferrals for reaccreditation from the Global Alliance of National Human Rights Institutions, because of its lack of transparency in appointing commissioners.⁷

However, upon taking office, Moon insisted that the NHRCK special briefings become a regular process, signaling a change from the pressure that the commission had come under from previous administrations. The main issues that he discussed with the chairperson were the establishment of a Human Rights Act and Human Rights Education Act, conscientious military service rejecters, the death penalty, and state violence.

The Right Not to Bear Arms

The problem of "conscientious objection" to military service in South Korea has been tensely debated since the early 1990's. Opponents of the concept point out that 'special circumstances' on the Korean Peninsula – namely, the looming security threat posed by North Korea – make mandatory military service imperative. Yet, despite adamant disapproval from military quarters and the Ministry of Defense, South Korea is slowly thawing its cold attitude toward conscientious military objectors. The current head of the Supreme Court, Kim Myung-soo has expressed support for alternative military service in September 2017.⁸ A month before that in August, Kang Jae-won, a district judge in Jeju, even went so far as to acquit two objectors who had been indicted for violating the Military Service Act. He then wrote a 60-page legal opinion refuting the Supreme Court's previous rulings on the illegality of military objection.⁹ This is reflective of a growing trend that has resulted in about 45 acquittals from lower courts in 2017 alone.¹⁰

Moon asked NCHRK Chairman Lee in the special briefing to establish guidelines for conscientious objection to military service that adhere to the standards of international human rights law.¹¹ Under article 18 of the UN Human Rights Council's International Covenant on Civil and Political

Rights, conscientious military objectors in South Korea should be able to exercise unhampered rights when refusing to bear arms under the protection of the law. However, it is uncertain whether Moon intended to grant this level of protection. While recent trends seem to show that Korea is fumbling toward full recognition, there will be continuous setbacks until objection rights are codified into legislation.

The Right to Be Protected From State Violence

Moon also emphasized in the special briefing that 'state violence should be eradicated.' By state violence, he meant the physical and psychological violence that soldiers go through during their service. Between 2014 and June 2017, there were 216 legal cases involving sexual harassment of female soldiers.¹² During this period, 189 individuals were identified as perpetrators. However, only nine of them were sentenced while the rest were put on probation, ordered to pay a penalty or found to be not guilty.

Conscripted soldiers in Korea are often subject to cruelty and exploitation, because of the rigid hierarchical culture that demands subordinates obey their superiors no matter what. This has been most clearly illustrated by the case of Four-Star General and Commander of the 2nd Operational Command, Park Chan-joo, one of the highest

ranking soldiers in South Korea. In 2017, it was reported that Park had ‘literally’ been treating his soldier like slaves. His ‘housekeeping soldiers’ were made to wear electronic bracelets so Park could call them whenever he desired. They swept his house floor, picked up his laundry, maintained his garden, tutored his children, translated his thesis into English, and did many other tasks that were clearly outside of their military responsibilities.¹³ But, in the end, a military investigation cleared him of maltreatment allegations.

More shocking statistics show how inhumane the Korean military can be. Between 2011 to June 2015, there were 3,643 reported incidents of physical harassment and violence, amounting to 2.2 per day.¹⁴ These reports include the horrendous case of Private First Class Yoon who was slapped in the face, hit in the chest and chin, and forced to lick up the food that dropped out of his mouth after being struck by a series of punches. He lost consciousness and never woke up again after one fatal episode of abuse by his superiors.¹⁵

One of the solutions to such pervasive brutality is to create an independent Military Human Rights Commissioner position to investigate crimes and misconduct. But the Ministry of Defense and NHRCK are at loggerheads over the exact amount of authority that should

be vested in such a person. For example, there has been push-back against the idea that a Commissioner would have the right to conduct unannounced on-site investigations. Military officials argue that it compromises national security, whereas those who support it argue that pre-planned visits will give time for bases to cover up evidence of mistreatment. A proposed revision to the Human Rights Commission Act (the founding law that established the NHRCK) seems to have reached a compromise – any military base or facility that rejects a visit from (the proposed) Commissioner’s visit without a valid reason will be fined 10 million Won.¹⁶ Yet, the bill has not been ratified or even formally considered by the National Assembly, and there is no guarantee that it will pass considering that the Ministry of Defense outright rejected the idea of a Military Human Rights Commissioner in 2015.

The Right to Work under Humane Labor Conditions

Lee Nam Ki, an airport employee who spent 17 years unloading cargo from airplanes, was getting ready for another day of work when he suddenly collapsed to the ground and passed away shortly after. His autopsy revealed the cause of death to be stress and overwork. According to the testimony of his colleagues, he sometimes worked 15 hours a day and over 270 hours a month.¹⁷ How was this possible, considering the

maximum legal hours for work in Korea is 52 hours (40 hours regular work plus 12 hours overtime) a week? The answer is that the previous government’s administrative interpretation of a week was that it consisted not of seven days, but five days from Monday to Friday. Therefore it was legal to work an extra eight hours each on Saturdays and Sundays, bringing the de facto legal working hours to 68 hours a week. Lee’s friends at work contended that the company had browbeaten him into coming to work and threatened to ‘put him at a disadvantage’ if he did not.¹⁸

Moon promised to cut the number of legal working hours when he announced his ‘100 National Tasks’ in July, but the amendment bill has been stuck in political limbo due to squabbling between rival parties and disagreements over the issue of double time pay. After five subcommittee sessions at the National Assembly’s Environment and Labor Committee in 2017 which focused almost solely on the matter, no deal has been brokered and any definitive decision has been postponed to 2018.¹⁹

Supporters of South Korea’s labor rights movement simply feel that the whole debacle is a red herring and have brought up Moon’s promises during his presidential campaign. He said that additional legislation to slash the outrageous working hours was not

necessary – all he needed to do was overturn the administrative interpretation that defined a week as 5 days. Now, it appeared that Moon was going back on his words. Moreover, it has been noted that neither of the proposed amendments or new legislation would fully protect workers considering the lack of labor unions which would allow them to reach collective agreements through bargaining. As a result, two of the biggest labor unions in Korea, the Korean Confederation of Trade Unions and the Federation of Korean Trade Unions, are jointly calling for the ratification of the International Labor Organization (ILO) Core Conventions. These conventions delineate the responsibility of government to ensure freedom of association and the right to organize, and South Korea is one of six countries (the others are China, Marshall Islands, Palau, Tonga, and Tuvalu) out of 187 ILO member countries that have not ratified them.²⁰ Both unions are protesting for immediate ratification, whereas the government has set 2019 as its deadline.

The Right Not to Be Sentenced to Death

In commemoration of the 20 years that passed without the execution of a single death penalty in South Korea, Pope Francis sent a congratulatory message to the Catholic Bishop's Conference of Korea, quoting his speech to the United States Congress: "...every life

is sacred, every human person is endowed with an inalienable dignity, and society can only benefit from the rehabilitation of those convicted of crimes."²¹ Amnesty International started classifying Korea as "abolitionist in practice" in 2007, due to the fact that not a single person has been executed since December 30th 1997. Nevertheless, as of 2016, there are still 61 death row inmates who have been in prison for an average of 14 years.²²

Former President Kim Dae-jung imposed a moratorium on the death penalty in 2001, strongly motivated by his own experience as a political prisoner waiting to be put to death by the state in 1980. In 2007, he pardoned 13 out of 52 prisoners who were on death row while his successor, Roh Moo-hyun, granted clemency to six.²³ But just when the abolition of the death penalty seemed most likely, the Constitutional Court dealt a blow to that aspiration by ruling 5 to 4 that capital punishment was constitutional. Yet, death sentences have not been carried out despite its legality. This can primarily be attributed to an agreement made between South Korea's Ministry of Justice and the Council of Europe back in 2009. Essentially, South Korea would uphold the 'non-appliance' of the death penalty and join both the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters.²⁴ In return, South

Korea gained greater access to European markets through the European Union–South Korea Free Trade Agreement. Therefore, South Korea's Ministry of Foreign Affairs has also come to disfavor the resumption of the death penalty considering the risk that it would pose to its free trade agreement with the European Union (EU).

Moon displays abolitionist tendencies, having said in a televised debate: "the death penalty doesn't have any deterrent effects, that's why it's been discontinued in 160 countries."²⁵ Minister of Justice Park Sang-gi echoed similar thoughts during his parliamentary confirmation hearing and said that "it's a policy that ultimately should be abolished."²⁶ But the most interesting argument comes from NHRCK Chairman Lee Sung-ho considering that he was the last person to sentence a person to death in Korea as a judge at the Seoul High Court. Kang Ho-soon, one of the most nefarious serial killers in recent Korean memory, was sentenced to death by Lee for raping and killing eight women. When asked in an interview why he opposed the death penalty now, Lee admitted that: "[j]udges do not like handing out death sentences and my wife told me not to do it...the rights of victims matter, of course. But the death penalty only satisfies the desire for revenge...Even the International Criminal Court's maximum sentence is a life sentence, not a death sentence. The public

needs to be persuaded.”²⁷

Public opinion is indeed imperative to the discussion. A 2015 survey by the Korean Legal Research Institute found that 65.2% of respondents still want the death penalty, and the percentage shot up to 79.4% in a more recent 2017 survey by Segye Ilbo.²⁸ How it will swing depends on a complex interplay of different factors – political leadership, civil society’s persuasion efforts, and the appearance of new high-profile murderers upon which support for the death penalty increases. It will also depend on the role of the government and NHRCK in building societal consensus and raising awareness as to why the death penalty must be abolished.

Conclusion – The Halls of Justice

So what can we say about Moon Jae-in and his ambitious human rights agenda so far, and what can we expect? Conscientious military objection, protection from military (state) violence, labor rights, and the death penalty are only a small fraction of the human rights issues that need to be addressed in South Korea.

Moon appears to be pivoting toward protecting the rights

of those who had previously been marginalized or dragged along without progress for too long. Many observers are betting on his background as a human rights lawyer and believe that his convictions seem to be right in the place. However, Moon will definitely be put to the test in the coming years. Some of his administration’s proposals are already generating discord and disappointment. A draft version of the National Action Plan for the Promotion and Protection of Human Rights 2017-2021 (NAP 2017-2021), a roadmap of human rights planning and strategy devised by the Ministry of Justice, was criticized by experts for lacking an evaluation of past policies and input from civil society.²⁹

Perhaps a more crucial proposition would be to draft a Human Rights Act that enshrines fundamental human rights and freedoms. A Human Rights Act would encompass the entire spectrum of human rights to be protected in Korea, much like the European Convention on Human Rights does for the EU. However, putting together a lofty, overarching Human Rights Act without having detailed laws that mandate and regulate policies will only cause strife over its interpreta-

tion. The rights of the disenfranchised would need to be guaranteed more effectively with the enactment of specific laws that institutionalize an alternative military service, decriminalize military objection, and amend legal working hours.

Moon has the opportunity to drive epochal change and transform the human rights landscape in South Korea. To not do so would be to betray his past as a passionate human rights advocate. He will need to tap into his past and act upon the values that he once embodied and defend those he stood in court for. James Baldwin once wrote: “...ask the wretched how they fare in the halls of justice, and then you will know, not whether or not the country is just, but whether or not it has any love for justice, or any concept of it.”³⁰ Moon should ask himself if the wretched of South Korea today would call their country just. Would they say South Korea loves justice? Or that South Korea has a concept of it? Until South Korea becomes a just country where everyone is entitled to human rights and can live their lives in dignity, Moon will not be able to ask these questions without a guilty conscience. ☸

The U.S. Military Involvement in Sexual Trafficking of Filipina Women in South Korea

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Following the Korean War, the United States and the Republic of Korea joined forces to maintain the Armistice and to protect the Republic of Korea (South Korea) from North Korea. In order to provide “rest and relaxation” centers for U.S. troops, *kijichons* (military camp towns) were developed.¹ Katherine Moon, a leading scholar on U.S.-Korea Relations, describe *kijichons* as “virtually colonized spaces” where the American soldiers have immense “buying power.” Sex work is a core part of the *kijichon* economy², and despite prostitution being illegal in South Korea, the sex industry around the U.S. military bases are concentrated with women in sex work. The U.S. military bases in South Korea is a hub for trafficking of many foreign women, especially Filipina women. These Filipina women are objected to sexism, racism, and other human rights abuse

from their employers, customers, and the Korean government. To stop human rights abuse of Filipina migrant workers in South Korea, the U.S. Department of Defense needs to recognize their relevance in the ill-treatment of these women and actively engage in the regulation of its soldiers and *kijichons*, while the Korean government needs to develop measures that can better protect migrant workers and reevaluate its policies regarding human trafficking.

In the 1990s, bars and clubs in *kijichons* were mainly occupied by Korean women who were derogatorily called *yanggongjus* (“western princesses”) and were subjected to maltreatment. However, as the South Korean economy improved, Korean women began to leave camptown bars and foreign women, mainly from Southeast Asia, began to replace them.³ In 2015, Korean Immi-

gration Services recorded that there were 1,813,037 foreigners residing in Korea, an exponential growth since 1990.⁴ Every year, more than 4,000 foreigners enter South Korea with “art and entertainer” (E-6) visas; the E-6 visa is further divided into E-6-1 visa (artists or entertainers who will appear on media), E-6-2 visa (entertainers in tourist establishments such as tourist hotels, restaurants, and “foreigner-only entertainment establishments”), and E-6-3 visa (sports persons). According to the Korea Immigration Service, 82.7 percent (4,207) of foreigners are staying in Korea on the E-6-2 visa, and 85.6% (3,602) of foreigners are women. An overwhelmingly large percent of 85.7 percent (3,089) of the women come from the Philippines.⁵

Although E-6-1 and E-6-2 visa applicants are required to receive a “recommendation of

performance” from the Korea Media Rating Board, traffickers know how to work their way around the system. Agencies bribe the authorities to let women pass the examinations or send in skilled doubles to obtain the needed documents for Filipina women who are interested in obtaining visa.⁶ The International Organization of Migration – Seoul reported there had been indications that the Technical Education and Skills Development Authority (TESDA) was involved in bribery and deception with the issuance of E-6 visas.⁷ Regardless of their performance level, when these Filipina women arrive in Korea, 90% of them are immediately taken to bars or clubs around U.S. military bases, which are different from work locations written in their original contract.⁸ In 2014, it was recorded that 75.1% of E-6-2 visas are issued to foreigners to work in “foreigner-only entertainment establishments”, such as bars and clubs in U.S. military camp towns; because Filipina women can speak English better than other foreign women, they are highly sought after by camp-town bar and club owners.⁹

Filipina women quickly realize that they are not in Korea to perform as singers, but instead as “juicy girls” who live in slavery-like conditions.¹⁰ My Sister’s Place (*Durebang*), a supporting organization for current and former E-6 workers, report that when the women arrive at the clubs, they are required to

fill their drink quota and are penalized if they cannot fulfill their requirements. When they accumulate debt, they are forced to prostitution. Club owners often do not pay the women, and restrict women from stepping out of their clubs during their free time.¹¹ Upon her arrival, Kosaldo, a 27-year-old Filipina woman who was lured to become a cultural Filipino dancer, found herself forced to sell drinks and at times go out with customers. She was threatened to be abandoned in the mountains if she did not abide the rules in the club. Luckily, during her work, she met Filipino customers who later helped her escape from the club.¹² Other women report being overworked and restricted; CN, a 31-year-old Filipina female said, “if we didn’t get clients to buy enough drinks, our boss or manager prevented us from going out...We also had to adhere to a strict curfew.”¹³ Not only are women subjected to sexual harassment from club promoters and customers at clubs and bars, but they also endure poor working conditions. Six or more women are packed into one room, having to survive on ramen noodles and are forced to work, even when they are ill.¹⁴ Camp-town clubs and bars’ inhumane living conditions often lead to death. In 2000, five foreign women died in a fire in a brothel in Gunsan and in 2002, a fire broke out in a pub and resulted in the death of 12 women who were prevented from escaping by barred exits.¹⁵

When the women try to flee the circumstances, they are victimized as trafficked women and as “illegal” migrants under South Korean law.¹⁶ When the club promoters and owners report women who run away to the immigrations office it results in a termination of their E-6 visa and deportation, in addition to the maximum penalty of 1,000,000 won (890 USD).¹⁷ When the women come to the Korean government for help, the most common response is deportation because the Korean government treat the women as illegal aliens, not as victims, as they “allegedly voluntarily engage in prostitution and make money.”¹⁸

Even though the trafficking of Filipina women is indirectly related to the U.S. Military occupation of Korea, when confronted, the U.S. Department of Defense takes on a passive role. The U.S. Department of Defense says that engaging in prostitution is a violation of U.S. military code of conduct, and that U.S. servicemen who engage with prostitution are in violation of such rules. They also claim that being involved in the regulation of trafficking would violate South Korea’s sovereignty.¹⁹ Still, a report by Saewoomtuh, a Korean NGO, shows that 84% of the male U.S. military personnel admitted to being with a prostitute during their station in South Korea, addressing the commonality of the issue.²⁰ U.S. Military Police who patrol camp-town also

know that most women working in camptown bars and clubs are trafficked, but they are more concerned with protecting the bars and brothels in the camptowns to ensure the safety of US servicemen.²¹

The South Korean government's response to the human trafficking of foreign migrant women to the sex industry has been lackadaisical. The entertainment sector is rarely monitored by the government; the 2012 Amnesty International Report indicates that the South Korean government was not aware that human trafficking was an issue related with E-6 visa. South Korea's definition of trafficking is very narrow and only criminalizes trafficking for prostitution, as defined under article 4(3) of the Act of the Punishment of Procuring Prostitution and Associated Acts. This definition is narrower than the international definition and thus excludes E-6 workers from government protection. The lack of intercommunication between different ministries also contributes to the problem. The Ministries of Justice, Labor, and Korea Immigration Service view human trafficking strictly as a law enforcement issue, but the police will not consider a

woman trafficked until she has been forced to have sex with a client. Migrant women are at greater risks of exploitation, as they are forced to stay at their work longer and engage in more demeaning and dangerous work until they can be considered victims of human trafficking.²²

The trafficking of Filipina female migrant workers on E-6 visa is a result of the U.S. Military Service's neglect of human rights abuse, the Korean government's indifference to its limited understanding of trafficking, and the Korean Special Tourism Association (KSTA)'s greed which leads to lax regulations of E-6-2 visa. The KSTA association wanted to bring in foreign women to work in nightclubs since 1996, because they believed that it would strengthen U.S.-Korea relation.²³ *Kijichons* will continue to exist as long as the U.S Military maintains its presence in South Korea; the Korean government and the US government must collaborate to address the sexual harassment and ill working conditions that Filipina women face in *kijichons*, and the abhorrent human rights abuse they face upon their arrival at a foreign land. ☉

In the Shadows

The Story of Two Sex Trafficking Survivors

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A lot of people have preconceptions about massage parlors and spas, but few of them know what is going on there; many of us have heard about sex trafficking, but the link between this notorious crime and massage parlors is not always apparent. As a social work intern at a non-profit dedicated to combating gender-based violence, I work with sex trafficking survivors from Asia. Through hearing their stories, I learned about the appalling conditions in the international sex trafficking industry.

Most Asian survivors of sex trafficking range from 35 to 55 years old. These victims are often motivated to migrate willingly in order to escape debt or domestic violence in their home countries. In most cases, these victims are defrauded and pay anywhere from \$15,000 to

\$100,000 (USD) to the traffickers for their US visas, where they expect to work as a nanny and earn a fortune. Their traffickers usually arrange drivers to pick them up from an airport when they arrive in New York and are typically charged \$300 to be driven ten miles from John F Kennedy International Airport to a family style motel in Flushing, Queens. After being charged these exorbitant fees, most sex trafficking victims are already in debt before their abuse and exploitation even starts. The motel owners then lure them to massage parlors, where they become the victims of modern day commercial sexual slavery.

My first client, Li, was born in a small Taiwanese city in the late 1970s. Li had an abusive relationship with her stepmother for years and was viewed as

a burden to her family. Consequently, she was sent to live with her grandma at 6 years old. However, in an era when gender biases against female children were still prevalent, her grandma preferred the boys in her household over her. As a result, Li was often neglected.

Growing up in an environment of neglect and violence, Li experienced severe childhood trauma. Her sensitivity, insecurity and attachment issues soon became a part of her personality, and her traffickers later took advantage of these vulnerabilities when they lured her with an illusion which she mistook for the “American Dream.” She accrued an overwhelming amount of debt during the travel and immigration process and was offered a job in a massage parlor to help offset her financial difficulties. However, she soon real-

ized that her “job” was to provide sexual services to her customers. When she refused, she was raped, threatened, beaten, and verbally abused repeatedly. The massage parlor manager ignored her whenever she asked for help. In the end, this abuse became routine and she simply lived with it for six years.

Two years ago, Li gave birth and the child’s father, one of her abusers, refused to take any responsibility and abandoned her during her pregnancy. Out of desperation, she tried to get help from her family in Taiwan but was harshly reprimanded and turned away by her mother.

“She yelled at me on the other side of the phone, and told me that I was not qualified to be her daughter. She said that I made her ashamed since I had a baby out of wedlock. She told me never to call her again. She hung up the phone, and I got depressed from then on.”

The cultural stigma on people who work in the sex industry could bury them alive, and having a child out of wedlock is almost a sin. Li always referred to herself as *gu ku ling ding*, which is a Chinese idiom to describe someone who is bitterly isolated, lonely, and helpless. In her culture, she was simply viewed as an immoral prostitute rather than a victim of the notorious international sex trafficking industry, leaving her no avenue to return to her hometown

and re-enter the society.

Among all the people I have worked with, Li is one of the more fortunate ones. Because of her Taiwanese identity, it was relatively easier for her to get a T-Visa for sex trafficking survivors than victims from other countries. As a result, she is supported by public assistance, has Medicaid, and is at a lower risk of facing hunger and homelessness now that she has escaped the sex trafficking industry. However, that is not the case for most people.

Ni, another client who I work with, is a woman from Malaysia in her late 30s. Ni grew up with her grandmother and extended family because her parents were migrant workers and could not afford to raise her in the city. Although separated from her parents, she received much love from her grandmother. However, her grandmother has not been able to motivate her to come back to Malaysia after almost 20 years. When asked why she refused to go back, she hesitantly described her experience being trafficked.

Ni was an attractive woman who easily caught the unwanted attention of men. However, at the age of 13, her uncle asked her to help him with his bakery and instead, violently raped her in the storage room. She was traumatized and terrified. After being threatened by her uncle not to tell anyone, she remained silent. However, after

five years of continuous rape and abuse by her uncle, she could no longer endure it. She did not feel safe and decided to leave everything and go as far from home as possible.

“I did not dare tell anyone what happened to me and where I am now; I couldn’t afford to make my parents worry about me. Life is tough enough for them, and I didn’t want to place additional burden on them. I told them I was in Hong Kong, and I am living a good life, so that they wouldn’t worry too much.”

Twenty years ago, Ni was approached by her traffickers while she was living in Malaysia with her sexually abusive uncle. She remembered the hope she had when they described the life she could have in America. Without a second thought, she made the decision and left with her traffickers.

“When I left, I didn’t think about what the future would be like at all. All I had in my mind was to leave my uncle. He destroyed me.”

Her passport was confiscated upon arrival in the US. She was sent to a remote home and locked up in a room with other girls her age. While there, the traffickers withheld food from her unless she complied with the sex buyers’ requirements. She was allowed to move around as time went by, but she still needed to rely on her traffickers for transportation and basic needs.

The situation lasted for months until her father passed away and she was released to go back home.

“I was counting every minute and praying to leave this torture. I did not dare to call the police. I was petrified.”

She felt no one would understand her experience, so she kept everything to herself. Her uncle’s presence at home and his continued abuse ultimately pushed her to leave again after one month. Her traffickers arranged for her to be sent to a massage parlor in New York, where she was raped and abused again. Before we met, she had been arrested more than ten times under prostitution and unlicensed massage charges. She now has two children fathered by two sex buyers, no immigration status, and continuously moves around New York for cheaper and safer places to live. Ni is extremely traumatized, and her mental health status frequently made her emotionally break down whenever

we talked about Malaysia. Ni has a home and a big family, but she cannot go back. In a sense, her uncle took everything she has and blocked her path to a normal family life.

Traffickers in Asia prey on easy targets who display vulnerabilities like Ni’s eagerness to leave her uncle, Li’s sensitivity, and their ignorance of the world. Their experiences are representative of developing countries in Asia, where social capital is accumulated in big cities, causing laborers to migrate from their rural homes, break families, and leave children behind with grandparents. Broken families are one of the leading factors for childhood trauma. In addition, most Asian countries share a patriarchal norm, which results in an unequal allocation of resources. Consequently, girls from less privileged backgrounds tend to have less education than boys, receive less attention when growing up, and have more restrictions on their behavior, leading them to be more submissive and silent.

These risk factors build up their vulnerabilities, giving traffickers the opportunity to capture, exploit, and abuse them without the fear of getting arrested.

As a social worker in this field, I am always overwhelmed by the stories. The vulnerabilities that face survivors to trafficking are beyond their ability to escape. It is impossible to help survivors without recognizing their trauma, their vulnerability, and the risk factors in their environment. These women can learn to cope with trauma through therapy; they can reduce their vulnerabilities through education and support. But how can we prevent more women from being trafficked in the beginning? Sex trafficking is a crime that cannot be eradicated by arresting traffickers. It is a manifestation of gender inequality, poor economic development, and poor education. Only by addressing these social and structural issues can we reduce the risk factors of exploitation that these young women face. 🌐

Love is Love:

The Compatibility of LGBTQ Rights and ‘Asian Values’

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LGBTQ rights have become an increasingly polarising issue in East and Southeast Asia.¹ At the heart of this discourse is the ostensible incompatibility between the global LGBTQ movement and “Asian values.” This is symptomatic of a larger debate on whether human rights can ever be truly universal.

This has resulted in unaddressed threats to the human security of LGBTQ communities in the region. Fundamental liberties remain out of reach for a historically marginalized community. Many Asian countries still criminalize homosexuality and fail to take positive measures to protect LGBTQ communities against discrimination and hate crimes.² The oppression that LGBTQ communities struggle with is further compounded by other factors such as gender, ethnicity, disabilities, socioeconomic class, citizenship, age, and religion, amongst others.

In this socio-political landscape, there are two broad options to legitimize LGBTQ activism and promote the human security of LGBTQ communities. One could assert that hu-

man rights are, and should be, universal since cultural relativism cannot justify oppression. Alternatively, one could frame the debate within the parameters of cultural relativism, and make a point that LGBTQ rights are compatible with the nuances of “Asian values” and culture. The latter is a narrower construction, and could be a more palatable way of grounding the discourse while respecting the cultural plurality of the region.

If so, two points can be made here. First, the normative underpinnings of “Asian values” are far from clear. This undermines attempts by governments to appeal to “Asian values” in order to justify the oppression of LGBTQ individuals. Second, LGBTQ rights are not mutually exclusive to ‘Asian values.’ The two can, in fact, be mutually reinforcing.

Normative Underpinnings of ‘Asian Values’

In 1993, 34 Asian countries issued the Bangkok Declaration. The declaration challenged the universality of human rights, arguing that rights “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 peculiarities in various historical, cultural and religious backgrounds.”³ Separately, the ASEAN SOGIE Caucus suggested that the “ghost of Southeast Asian values” were incompatible with LGBTQ rights.⁴

In Singapore, debates around anti-queer policies have been articulated as the mutual exclusivity of “individual” rights of a sexual minority, and the “moral standards of a larger society.”⁵ Singaporean Member of Parliament Baey Yam Keng criticized information about homosexuality on the Singapore Health Promotion Board’s website, saying that it lacked “the Asian values of family.”⁶ In Hong Kong, former Legislative Council Member Pang Chun-Hoi argued that homosexuality “is against the Chinese tradition” and is “considered evil by Chinese.”⁷ He even declared that the decriminalization of homosexual sexual activity would be a “rape of public opinion.”⁸ In Indonesia, former Minister of Education and Culture Anies Baswedan posited that being LGBTQ goes against “religious and cultural values,” and that

“teachers and parents [should] teach values to protect children from becoming LGBTIQ.”⁹ In Malaysia, Prime Minister Datuk Seri Najib Razak claimed that the “threat of liberalism” ruins Muslim identity.¹⁰ In the Philippines, President Rodrigo Duterte has maintained that “western values like human rights” should not be “forced” on the Philippines, given that the country is Catholic, and only permits marriage between heterosexual couples.¹¹

Yet, this cursory survey raises three discomfiting difficulties.

First, what form does this incorporeal “ghost of Southeast Asian values” take? Wee Kim Wee has stated that Asian values emphasize morality, duty, and community, by “placing society above self, upholding the family as the basic building block of society, resolving major issues through consensus instead of contention, and stressing racial and religious tolerance and harmony.”^{12, 13} Yet, besides appealing broadly to a sense of communitarianism, the substantive content of this precept is unclear. On the one hand, there is a Chinese conception that consists of an amalgamation of Confucian, Taoist, and Buddhist ethics, collectivism, and communitarianism.¹⁴ However, ‘Asian values’ can also be understood to include Islamic, Catholic or Christian values. It is unclear whether these cultural precepts across Asian countries

can be truly homogenous and unequivocal, as it has been invoked.¹⁵

Second, it is plain that “Asian values” are shaped reactively, rather than being defined from a clear conceptual base. Most notably, it serves almost as a catch-all shield whenever the “West” pushes controversial topics, such as gender and sexuality, the death penalty, sex work, and drug intervention.¹⁶

Third, by painting these values as inherently “Asian,” and thus representative of the whole of Asia, the cultural dynamism and diversity of the region is, ironically, subverted. For instance, Singapore and Hong Kong’s conception of “Asian values” grounds itself in “Chineseness,” even though Asia, as a region, is far from being predominantly Chinese.¹⁷ This contradicts the object and purpose of the Bangkok Declaration, which sought to highlight the pluralism of domestic and regional peculiarities.

Therefore, this “Pan-Asianess” lacks a clear normative underpinning, through its conflation of various strands of “cultural lineages” (from fundamentalist Christian values, Sino-Confucian values, and Islamic values) to support a specific cultural political agenda: the perpetuation of homophobic laws.¹⁸

Are Greater Inclusivity and “Asian Values” Mutually Exclusive?

Assuming that “Asian values” can be clearly defined, it is still doubtful whether they are at odds with LGBTQ rights. The Constitutional Court of Taiwan recently issued a ruling in favour of same-sex marriage in May 2017, based on Articles 7 and 22 of the Constitution.

The decision is worth closer perusal. The Court put forward that freedom of marriage would not alter the “social order established upon the existing opposite-sex marriage.” Rather, this autonomy will constitute the basis of a “stable society.”¹⁹ In other words, allowing for same-sex marriage will contribute to social stability, instead of disrupting it. By drawing a clear correlation between LGBTQ rights and communitarianism, the Court points out that greater recognition of LGBTQ rights can be a vehicle for social cohesion. In other words, the greater inclusiveness of LGBTQ individuals in society can promote the very thing that LGBTQ rights are purported to threaten. This lends legitimacy to the argument that human diversity, rather than particularity, falls within the “Confucius notion of collectivism.”²⁰ The two are, in fact, compatible. Arguably, they are even mutually reinforcing.

It is worth noting that the present case was concerned with the positive right of marriage. This is distinct from negative LGBTQ rights, such as the right not to have one’s sexual orientation and/or gender

identity criminalized.²¹ In the latter, it is argued that domestic courts, when given the task of scrutinizing discriminatory laws, should exercise an even narrower margin of deference to the legislature. This is particularly relevant in countries where some form of same-sex sexual activity is still prohibited.

For instance, in Singapore, same-sex sexual activity between males is criminalized under Penal Code 377A. During a constitutional appeal against 377A, the Court held that its “role and function is not to second-guess whether parliament could have or ought to have devised a more efficacious differentia” in determining whether the differential treatment of male homosexuals in Singapore is justified.²² On issues of morality, the judiciary would tilt the scales in favour of the legislature.²³ Notwithstanding the differences between Taiwan and Singapore, it is unclear how the reasoning by the Singapore High Court holds up against the Taiwanese Constitutional Court. The latter held that in determining the constitution-

ality of differential treatment based on sexual orientation, a “heightened standard” of scrutiny would be applied. If a positive right (to marry) is examined through a heightened level of scrutiny, an even higher level of scrutiny should be employed to examine a negative right of LGBTQ individuals not to be oppressed through the law.

The regional influence of the Taiwanese court can hopefully act as a snowball for greater protection of LGBTQ communities, especially where negative rights are involved. It contradicts the pre-existing narrative that greater inclusivity of LGBTQ individuals must be mutually exclusive to Asian ideals of collectivism, by presenting a “powerful counter-narrative to still-prevalent arguments that LGBTQ rights are merely Western products incompatible with local cultures.”²⁴

Conclusion

Invoking a smokescreen of “Asian values” does not address the criticisms of discriminatory state policies, but merely evades

it. This is insofar as the concept of “Asian values” lacks both normative and legal legitimacy. LGBTQ rights are human rights inherently embraced by all human beings regardless of where they are from.²⁵ In the absence of these rights, LGBTQ communities are vulnerable to tangible threats to their human security and liberty.

Instead of appealing to an ideological quasi-divide between the “East” and the “West,” it would be more useful to engage more transparently with the competing concerns in this debate. A deeper understanding of how LGBTQ persons can be legitimately recognized in society would go a long way in allowing for a more inclusive and non-discriminatory society that has space for diversity. This conversation will lead to strengthened protections for the human security of the LGBTQ community in Asia. Love is love, and a person’s sexual orientation and gender identity should never be a reason for criminalization, oppression, marginalization, and stigmatization. 🌐

A Cautionary Tale of Two Disasters: When Humanitarian Aid is Used for Political Gain

An Analysis of Sri Lanka's Civil War and Tsunami

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Sri Lankan Conflict: The First Disaster

The conflict in Sri Lanka has its underpinnings with the marginalization of the minority Hindu Tamils. The Tamils' grievances grew from the systematic disenfranchisement they experienced both during the colonial system and after. In 1976, the Liberation Tigers of Tamil Eelam (LTTE) was founded as an opposition to the government; its stated objectives were to fight for the rights of the country's Tamil minority and for an independent Tamil state (ICG 2006). It wasn't long before the LTTE became a political organization, seeking secession from Sri Lanka and a separate state for the Tamils.

At the end of the 1970s, the government created severe anti-terrorism laws and rounded up and imprisoned thousands of youth. In 1983, the LTTE ambushed an army convoy, killing 13 soldiers (BBC 2016). When the news broke of the attack, anti-Tamil violence spread rampantly through the capital of Colombo and elsewhere. Mobs of Sinhalese murdered more

than 2,500 people while the government did not intervene. In response, 500,000 Tamils fled the country as refugees to India and elsewhere in the world (BBC 2016). The civil war had begun.

The conflict was characterized by widespread suffering inflicted on non-combatants, rapid deterioration of government authority and civil society, severe food insecurity at times, and many internally displaced people. In the 1970s and 1980s, an approximate 10,000 to 30,000 people – many of them youths – were killed in the civil war and political conflict.¹ International human rights organizations assert that both the government and the LTTE engaged in serious war crimes throughout the civil war. After the LTTE's tactics evolved to include frequent suicide bombings, they gained classification from over 32 countries as a terrorist organization.² On the other side, the Sri Lankan government had an official policy of "zero civilian deaths," but their shelling most likely killed thousands of civilians (UN 2011).

Peace was on the horizon in 2002 when the Sri Lankan government signed a ceasefire with the LTTE. However, this ceasefire agreement was not inclusive enough; it focused mostly on the government and LTTE's grievances and did not include southern political elites, non-LTTE Tamil parties, and the Muslim community (ICG 2006). While the peace negotiations were making progress, the unimaginable happened in 2004.

The 2004 Tsunami: The Second Disaster

On the morning of December 26th, 2004, the Indian Ocean tsunami rocked the coasts of Sri Lanka with a massive tidal wave. The tsunami wreaked havoc on Sri Lanka's coast, infrastructure, environment, and communities, resulting in over 40,000 lives lost, which is nearly half the total death toll from 26 years of civil war.³ Out of the tsunami-related lives lost, an estimated 22,000 were Tamils who lived in LTTE-controlled areas (Nilhand 2014) and more than 500,000 were displaced (Gowrinathan and Mampilly

2009).⁴

The sudden onset of the crisis and its unprecedented magnitude mobilized the international community more than any other crisis before it. The tsunami killed about 228,000 people across 14 countries (Tsunami Evaluation Coalition, TEC 2007). The first people to respond were the local people themselves. They provided the first response for medical first aid, infrastructure removal, and early emergency support (TEC 2007). After community members provided the first response, next came military support from within Sri Lanka and neighboring nations which played an important role in early recovery. A third stage of support came from the international community – the UN, international NGOs, and foreign Red Cross agencies. The UN responded more quickly in Sri Lanka as compared to other tsunami affected countries because it already had access in the country through their conflict-related programs and staff.

Economically, Sri Lanka lost \$1.45 billion from the tsunami (TEC 2007), yet the burden was not shared throughout the entire country. Northern and eastern coastal areas of the country were hit the hardest, and these areas were predominantly inhabited by Tamils and Muslim minorities. The complex political ecology, briefly described earlier in this essay -- including the history of in-

dentured labor -- and forced population transfers of Muslims out of these regions by the LTTE in the eastern province placed large, vulnerable Tamil communities in close proximity to the coast (Kuhn 2009). This means that the Tamils (and therefore the LTTE) were hit hardest economically by the tsunami, relative to the government. As international aid began pouring into the country, it was funneled through both the government and the LTTE in areas where they were administering services.

When Aid Became Political

A huge and unprecedented influx of humanitarian aid poured into the country. This influx of new resources challenged the already precarious political situation and weak governance system. The LTTE accused the government of restricting aid to non-Tamil southern communities. Meanwhile, the LTTE's aid agency, the Tamil Rehabilitation Organization (TRO), required all humanitarian agencies to channel assistance through it in LTTE-controlled areas.⁵ The University Teachers for Human Rights, a Sri Lankan human rights group, accused the LTTE of channeling this aid money through their organizing bodies in order to launder the money for military purposes (UTHR(J) Bulletin no. 37, 10 January 2005). The government also accused the LTTE of overreaching on control of this humanitarian aid.⁶

Additionally, the international aid potentially created incentives for the government to return to war. Some aid came into the country in the form of direct cash transfers to the government; this meant that the government did not have to use all of its own resources for relief efforts and could instead reserve its limited resources for future political purposes. Certain academics argue that the tsunami and relief efforts tilted the balance of power in favor of the government of Sri Lanka (Kuhn 2009).

In June 2005, relations between the government and rebels deteriorated over sharing of the international tsunami aid. The Tsunami Evaluation Coalition Synthesis Report concluded that there was widespread confusion and policy differences between the central, regional, and local governments (TEC 2007). Because the Tamil majority areas were some of the hardest hit by the tsunami, disputes over territory control constrained government action in some of the worst affected parts of the country.

The peace process started to unravel shortly after the tsunami in 2006. Despite relative stability following the tsunami, the accusations of political manipulation over humanitarian aid on both sides exacerbated underlying tensions. The peace process crumbled rapidly and violence resumed, even more intensely that it had been before.

Violence spiked again in June 2008 and continued throughout the year. Then on May 18th 2009, the government launched a huge military offensive on LTTE, finally ending the civil war. The end came in a very violent way when the government defeated the LTTE by killing its leader Velupillai Prabhakaran in the last area of rebel-held territory in northern Sri Lanka (BBC 2016). The government claimed victory over LTTE, but not without catastrophic consequences; some organizations put the estimation of deaths up to 40,000 civilian deaths in the final weeks of the war.⁷ The total casualties from the civil war are estimated to be between 70,000 and 80,000 people.

Sri Lanka's Current Trajectory and the Risks of 'Business as Usual'

The violent end of the civil war, lingering mistrust on both sides, and overall weak governance has damaged Sri Lanka's capacity to respond to future crises and conflicts. Today, unresolved ethnic tensions, poor service delivery, and disaster risks pose serious threats to Sri Lanka's long term development. The civil war cost the government approximately 30% on average of its annual budget, and cost the country over \$200 billion total, which is three years'

worth of Sri Lanka's GDP.⁸ Since the end of the civil war in 2009, the national economy has been resilient and experienced growth. However, this is largely due to a post-war boom that is unlikely to be sustainable over the long haul.

While the civil war officially ended in 2009, ethnic tensions between the Sinhala majority and the Tamil minority are still unresolved. Today, nearly nine years after the end of the civil war, post-war reconstruction has advanced in parts of the country, but majority-Tamil areas still face high levels of poverty and displacement after losing their land. In 2015, the government initiated plans for a truth and reconciliation commission, but the UN rejected this proposal in favor of a more impartial, special hybrid court with international judges, lawyers, and investigators to try the war criminals and address abuses on both sides of the conflict. Still, by 2017, the government of Sri Lanka had not adopted this recommendation, even after years of pressure from the UN Human Rights Commission urging Sri Lanka to provide restitution for all private land occupied by the military and to formulate a hybrid court (OHCHR 2017).

In the years since the end of the civil war, the country's

slow process of transitional justice has hindered the progress of building inclusive institutional structures. Moreover, the country faces increasing sustainable development challenges such as waste management, coastal zone management, and disaster risk reduction. In October 2016, drought struck Sri Lanka, testing its young national disaster preparedness institutions. Between late 2016 and mid 2017, an estimated two million people had been affected by drought, especially in the north and the northeast parts of the country (Relief Web 2018). National drought predictive capacity was limited and distribution of relief aid was cumbersome, indicating much room for improvement.

Future disasters and negative climate change impacts could further exacerbate ethnic tensions in the northeast region and pose serious concerns to human security. These challenges cannot be addressed unless the government builds transparent, inclusive, and accountable institutions. By prioritizing good governance, the Sri Lankan government will pave the way for disaster preparedness, reconciliation and healing, and the safeguarding of human security in the future. Failure to do so will have grave consequences for the human security of Sri Lankans. 🌐

Population Aging, Old-age Poverty, and Human Security in East Asia

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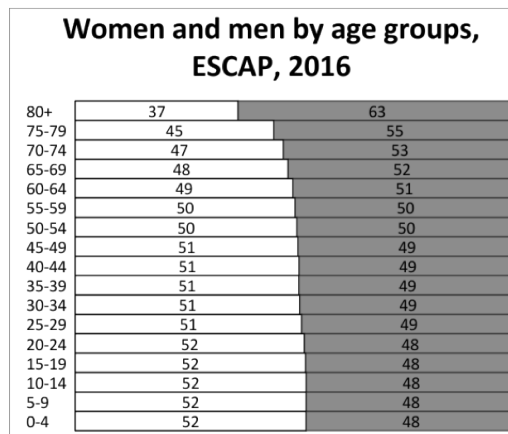
The Asia-Pacific region is at the forefront of population aging. With 549 million people aged 60 years or over in 2017, the region is home to 57% of the global older population. Over the next 30 years, this share is projected to increase to 61%. By then, the number of older persons in the region is expected to continue being the highest worldwide.¹

The main reasons for this demographic change are rapidly declining birth rates and longer life spans. In the most advanced countries in the region, life expectancy at birth is over 80 years.² Another fundamental trend is the growth in the proportion of older-olds or those 80 or older. Within member countries of ASEAN, one out of four older people will be over the age of 80 by 2050, while the number of centenarians will at least triple. Furthermore, women tend to live longer than men. Thus, there is a larger number of older women than older men, consti-

tuting the majority (53.5%) of the population aged 60 or older in the Asia-Pacific region.³ The proportion of women also rises

poverty and despair,” and acknowledged that “all individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential.”⁴ Human security aims at ensuring the survival, livelihood, and dignity of people in response to existing and emerging cross-cutting threats. Today, people throughout the world, in developing and developed countries alike, live under varied conditions of insecurity that are not limited only to

Figure 1. Feminization of population aging



Source: United Nations, ESCAP (2016). ESCAP 2016 Population Data Sheet.

further with age. These factors create the so-called “feminization of aging.”

Human Security, Income Security, and Old-age Poverty

As stipulated in paragraph 143 of the 2005 World Summit Outcome document (A/RES/60/1) entitled “Human Security,” heads of UN member States and governments stressed “the right of all people to live in freedom and dignity, free from

abject poverty or complex conflict. Accordingly, human security emphasizes the universality and interdependence of a set of freedoms that are fundamental to human life: freedom from fear, freedom from want, and freedom to live in dignity.

As such, population aging presents unique challenges to human security that societies must adapt and governments must respond to. Older people often suffer from poverty dur-

ing their retirement years with a reduced level of stable income. Particularly, older women who are often widowed tend to find themselves in vulnerable situations due to disadvantages throughout their lives, including lower levels of education, limited participation in formal work, and unpaid caregiving work. This threatens older persons' fundamental rights of freedom from want and freedom to live in dignity. To further underscore the rights of older persons to human security, the Universal Declaration of Human Rights mentions the particular vulnerability of older persons in Article 25, which states that:

“everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including [...] medical care and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

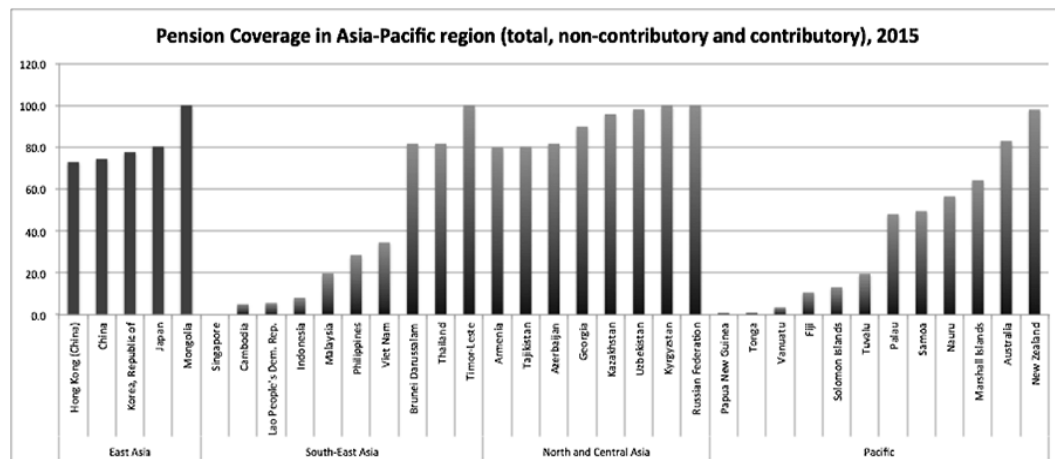
Therefore, the first part of the paper encompasses the linkages between the situation of older persons in East Asia, the incidence of poverty, and human security. With pension and

welfare payment systems either being non-existent or having limited coverage in most of Asia and the Pacific, poverty is closely linked to the ability to earn an income. In fact, in most countries of the region, less than a third of the working-age population contributes to pension schemes, and pension coverage for older persons was only 47% in Asia and the Pacific in 2013-2014.⁵⁶ See Figure 2. Particularly in East Asia, apart from Mongolia, most other countries have limited, partial pension coverage. For example, according to the 2012 OECD Economic Survey, South Korea's public spending for old-age benefits was only 1.6% of GDP in 2007. Moreover, according to South Korea's Ministry of Budgeting and Finance, only 0.26% of the 2014 national budget was allocated for services and income for the elderly. Given the actuarial basis of the 1988 National Pension Scheme, the elderly re-

ceive very small sums—a maximum of \$83 per month from the pension fund—and the full pension age of 60 is gradually being increased to 65.⁷

The risk of falling into poverty is thus increasing with age as this ability declines. The ability to earn an income decreases due to a range of factors including declining health, informal labor market participation, regulations specifying age limits for formal employment, and discrimination by employers against older persons. Older women are particularly at a disadvantage; they tend to be marginalized due to gender-based discrimination patterns throughout their life and tend to be poorer than men. In the case of informal labor market participation, in low- and middle-income countries, formal employment accounts for less than 10% of the economy and the majority of older persons work

Figure 2. Pension coverage in the Asia-Pacific region



Source: International Labor Organization (2015). Social protection for older persons: Key policy trends and statistics.

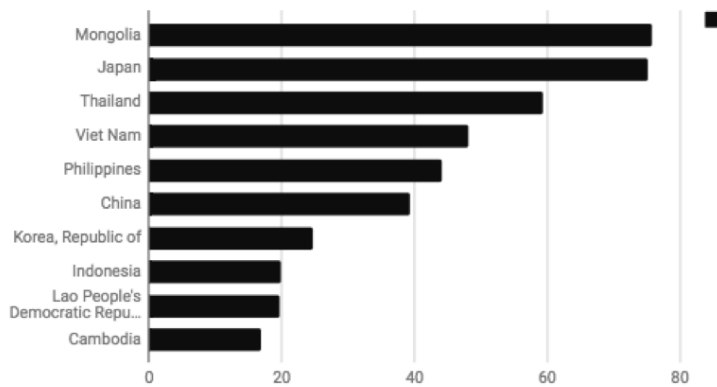
in the informal sector.⁸

To this end, the Global Age Watch Index 2015⁹ presented data on income security

er persons is 71.6%.¹⁰ However, despite older persons reporting satisfaction with the pension coverage and thus high-income security, they also report that

age and gender, on household income distribution, and thus situation of older persons in East Asia as well as Asia and the Pacific in general.¹³ This was pointed out by the United Nations Human Rights Special Rapporteur on extreme poverty and human rights in her report at the Fourteenth Session of the Human Rights Council, which was one of the latest official reports on the matter.¹⁴ Particularly, “there is a lack of understanding of the dynamics of dependency upon different family members; and the current measures of old-age poverty relying on household income neglect the fact that, in many multigenerational households, resources are allocated disproportionately towards children and those of working age.” The only latest data for OECD countries in 2015 point to South Korea as the only country in East Asia with the rates of income poverty in old age higher than that of the total population (14 to 35 percentage points higher respectively). This rate increased from the previous data available, with the reason being the pension system is not yet fully developed. For some other countries, low rates might be due to pensioners acquiring their accumulated pension as lump sums rather than annuitizing them to allow regular income streams.¹⁵ This reflects a variety of scenarios leading to old-age poverty, beyond the states’ pension systems that require further research.

Figure 3. Income security in old age, selected ESCAP countries, 2015



Source: HelpAge International (2015). Global Age Watch Index.

of older persons in a number of selected East and Southeast Asian countries where data is available. See Figure 3.

Measured by pension coverage, poverty rate in old age, the relative welfare of older people, and living standards using Gross National Income (GNI) per capita as a proxy, this income security index shows Mongolia (75.8) and Japan (75.1) in the top of the region. Data gaps prevent the inclusion of other countries in East Asia for comparison. Mongolia takes the lead in the income security category with the score of 75.8. Due to the Social Insurance Fund, the percentage of retirement pensions received by old-

old-age pension growth does not catch up with rising prices of consumer products. Japan comes second with a higher GNI per capita than its neighbors and has developed a healthcare system among those with the highest life expectancy in the world. This reflects the countries’ progressive social policies. For Japan, it prioritized health and education early and established universal health insurance and social pensions in 1961.¹¹ The percentage of older peoples’ labor force participation in these two countries is among the highest in OECD countries.¹²

Otherwise, there has been a dearth of systematic and comprehensive disaggregated data on the incidence of poverty by

The second part explores the available tools and options to alleviate poverty and ensure income security for older persons. It is argued that employment and social protection remain the two most viable options. With an emphasis on the complementarity between the two, it may be possible to alleviate the incidence of poverty amongst older persons. However, the main obstacles to older persons continuing their formal employment or re-entering the labor market are age discrimination (“age-ism”) and changing technology which renders the skills of older persons outdated.¹⁶ Furthermore, as mentioned, formal employment in low- and middle-income countries accounts for less than 10% of the economy and the majority of older persons work in the informal sector. Coupled with the limited prospects of increasing employment for older persons is the decline in family support. That is, as a conse-

quence of population aging, the old-age support ratio of people at working-age is decreasing sharply.¹⁷ See Figure 4.

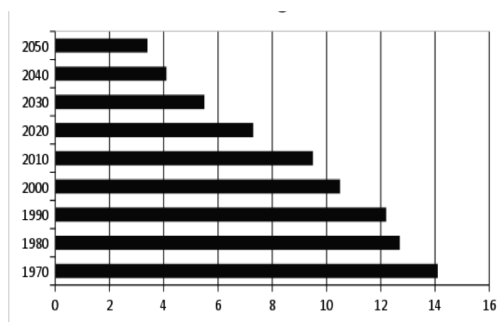
Thus, guaranteeing income security in old age depends largely on social protection. There are three main elements of social protection for older persons: (a) contributory pensions, (b) non-contributory pensions (or social pensions), (c) health insurance. Contributory systems of social security in the Asia-Pacific region have been restricted largely to a small proportion of older persons who had high incomes from their own businesses or held regular jobs in the formal sector, while major proportions of the population work in the informal employment sector. This further accentuates gender inequalities against older women as mentioned above. Non-contributory pensions are flat rate benefits financed out of

general revenues, which aim to reduce poverty and secure a minimum income for the elderly. They are thus one of many instruments of social protection designed both to protect older persons against adverse shocks and to contribute to economic and social development more broadly. Because social pensions benefit persons who have not,

or insufficiently participated in formal labor markets and hence, did not acquire entitlements from occupational or market insurance, their impact on those in poverty is potentially high. It is thus argued to be the more effective means to ensure universal pension coverage, capable of significantly reducing poverty and vulnerability in particular for women, who live longer and are less likely to benefit from contributory systems.¹⁸

To this end, according to the latest data from Pension Watch,¹⁹ there are 28 out of 59 countries in the Asia-Pacific region that have implemented non-contributory pension systems. However, non-contributory pensions (or social pensions) can be further categorized as targeted (provided selectively to the poor) or as universal (provided to the entire elder population). The question of poverty targeting raises one of the most controversial design issues for social pension programs. For targeted social pensions, the rationale is the potential cost-effectiveness attained by reducing the so-called “inclusion error” of universal social pensions – the distribution of pensions to those who are not poor and in need of assistance. There are some particular forms of targeting including regional, means-tested, residence or a combination of them; this is to identify “truly deserving” older-age individuals. Universal social pensions, on the other hand, pro-

Figure 4. Declining old-age support ratio in the Asia-Pacific region



Source: United Nations, ESCAP (2016). ESCAP 2016 Population Data Sheet.

vide benefits to all older persons who qualify on the basis of their age; the rationale is to prevent the “exclusion error” potentially caused by targeted social pensions.

Currently, none of the East Asian countries have universal social pensions, while only six out of the above 28 countries in the Asia-Pacific region (where data is available) have implemented universal social pensions, the rest have implemented targeted social pensions.²⁰ While targeted social pensions are usually justified on the grounds of fiscal costs and equity, the benefits and shortcomings of targeting remains controversial. Targeting has been proven to involve both direct and indirect costs, depending on the methods chosen and the context of poverty in each country (ADB 2012). The direct cost is the administrative expense from implementing based on the targeting mechanisms. The indirect costs include economic, political, and social losses.²¹ Also argued by the Asian Development Bank (2012), there has been no systematic and holistic review of the social pensions’ targeting performance in Asia, “but a study of 15 African countries with high poverty rates show little difference between universal provision and perfect poverty targeting.” It was concluded that the case for poverty targeting depends largely on the level of poverty; targeting is not necessary if the poverty rates are very high.

As for universal non-tested social pensions, Willmore argues that the programs “are the easiest to administer, but they are fiscally expensive.”²² However, it was also remarked that universal provision has significant advantages over means-tested schemes. This aligns with the arguments made in the report to the Human Rights Council by the United Nations Independent Expert on human rights and extreme poverty. The report provided evidence to demonstrate significant advantages of universal schemes in reducing old-age poverty. That is, due to the more simple structure with the lowest administrative costs, universal pensions are more likely to be successful in achieving their aims and to reach those furthest behind. Universal pensions are also deemed to be more gender sensitive, as women and men receive the same level of benefits regardless of their participation in the labor market; this thus recognizes the contributions women made in unpaid work such as caregiving. Notable examples of universal pensions in the wider Asia-Pacific region include Brunei Darussalam, Nepal, and Samoa. In a policy brief issued by Pension Watch,²³ it was also argued that universal social pensions are economically viable and efficient strategies to produce welfare and alleviate older-age income deprivations. There are sufficient resources to implement basic social pensions on a global scale; the question is whether there is also

the political will for implementation.

Concluding Remarks

To ensure that human security and, thus, universal pension coverage can be achieved in old age, this paper has demonstrated that non-contributory pensions are the optimal means. However, social pensions must not be regarded as the only mechanism to address old-age poverty and human security. Rather, it should be one of the crucial elements of an exhaustive social protection strategy that seeks to address the impact of poverty throughout a person’s life. While non-contributory pension schemes may not be feasible in every context, it is important to reform the pension systems in ways that take into consideration the large and growing population of older persons and their needs for adequate social services, particularly access to healthcare. Thus, for better and more appropriate implementation, social pension research and evaluation should focus more on the costs and benefits of universal versus targeting social pensions in the future. 🌐

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3 Section 15. *Use of Dangerous Drugs*. - A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (P50,000.00) to Two hundred thousand pesos (P200,000.00).

4 Persons arrested under Section 11 of RA 9165 are not eligible for confinement under the CSP, because the imposable penalty for Section 11 is imprisonment for at least twelve years and one day.

5 Confinement of arrested persons for violations of RA 9165 under the Compulsory Submission Program is provided for under Section 62 of RA 9165:

Section 62. Compulsory Submission of a Drug Dependent Charged with an Offense to Treatment and Rehabilitation. – If a person charged with an offense where the imposable penalty is imprisonment of less than six (6) years and one (1) day, and is found by the prosecutor or by the court, at any stage of the proceedings, to be a drug dependent, the prosecutor or the court as the case may be, shall suspend all further proceedings and transmit copies of the record of the case to the Board.

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19 *People v. Madarang*, 322 SCRA 99 (2000).

20 *Verdadero v. People*, 785 SCRA 490 (2016).

21 *Id.*

22 Following the ICD-10 coding, the examples fall

into the disorder categories of withdrawal state, psychotic disorder, and residual and late-onset psychotic disorder.

23 *Supra*, at Note 06.

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25 *People v. Jumawan*, 722 SCRA 108 (2014), citing *City of Manila v. Hon. Laguio, Jr.*, 495 Phil. 289, 326 (2005).

26 Section 19.

1. Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

2. The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

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