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## **A Human Security Approach to Human Rights Due Diligence: Why business needs a human security index**

Yasunobu Sato <sup>1</sup>

### **Abstract**

The United Nations Guiding Principles on Business and Human Rights in 2011 urge for Human Rights Due Diligence (HRDD) to be conducted by business enterprises. HRDD was recommended to them as a means of implementing respect for human rights in their business activities. The Guiding Principles are to be incorporated into their risk management in order to avoid accusation of complicity in human rights violations that might be committed by business partners in their supply or value chains. Although it was invented as an operational tool for global companies to respect human rights in developing countries, its effectiveness remains largely unknown. In contrast, there are case studies such as one in Cambodia in which Oxfam Australia accused Australia and New Zealand Bank (ANZ) of funding a land-grabbing company, which also allegedly used child labor. The local farmers were doubly victimized by this accusation since ANZ Bank later terminated the business relationship with the company without providing any compensation for them. To date, the victimized farmers have not been able to access remedy. In order to address the local reality of such vulnerable people so as to prevent human rights violations and offer remediation for such violations, a human security approach can be considered as a comprehensive and holistic approach to compensate for the limitations of a purely human rights focus. Applying more inclusive perspectives, it can consider other relevant factors of labor rights, environment, governance as well as poverty and conflict. To this end, a human security index should be developed for assessing local realities and improving the means of redress. It can also be developed for business enterprises to become organizations that are better suited for sustainable business.

### **Keywords:**

Human Rights Due Diligence, The United Nations Guiding Principles on Business and Human Rights, human security approach, human security index, soft law

## **1. What is Human Rights Due Diligence?**

### **1.1 UN Guiding Principles on Business and Human Rights**

The concept of Human Rights Due Diligence (“HRDD”)<sup>2</sup> was introduced in the “Guiding

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Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” (“Guiding Principles”), endorsed by the United Nations Human Rights Council in its Resolution [17/4] in 2011. The Guiding Principles were presented in the final report by the Special Representative of the United Nations Secretary-General “[...] on the issue of human rights and transnational corporations and other business enterprises” (the so-called Ruggie Report [A/HRC/17/31]). This was significant because the Human Rights Council consisting of representatives of the member states adopted such ambitious guidelines on human rights for business for the first time. The Commission on Human Rights, which is a predecessor of the Human Rights Council, had failed to adopt the Norms on Transnational Corporations and Other Business Enterprises, which was drafted by its expert subsidiary body in 2003.

The Guiding Principles are a milestone of the UN’s efforts to address the private sector, which cannot be directly bound by international law, on how to deal with human rights. Two of the ten principles<sup>3</sup> of the UN Global Compact (“UNGC”), a partnership agreement between the UN and private companies to commit to the UN principles, concern human rights together with the principles on labor rights, environmental protection and anti-corruption.

Based on these efforts, the Guiding Principles were developed by the UN and its member states. In this process, ISO 26000 for social responsibility was adopted as an initiative of the private sector and civil society in 2010.<sup>4</sup> This is a global standard not only for “Corporate” Social Responsibility (CSR), but also for the responsibility of any organization. It includes a section on Human Rights Due Diligence (6.3). The Guiding Principles also influenced the OECD Guidelines for Multinational Enterprises. The latter’s 2011 added a section IV on Human Rights, which contains similar provisions, including Human Rights Due Diligence, together with detailed commentary. It also added the provision of the National Contact Points under the Guidelines as a grievance mechanism.<sup>5</sup>

## **1.2 Protect, Respect and Remedy**

The Guiding Principles address (i) the *State Duty to Protect Human Rights*, (ii) the *Corporate Responsibility to Respect Human Rights* and (iii) *Access to Remedy* as their general principles. States are obliged to protect human rights by regulating business enterprises, including multinational corporations.

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<sup>2</sup> The United Nations Human Rights Council, 2011, 16-20.

<sup>3</sup> Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and Principle 2: make sure that they are not be complicit in human rights abuse.

<sup>4</sup> See ISO homepage: <https://www.iso.org/obp/ui/#iso:std:iso:26000:ed-1:v1:en> accessed on August 14, 2015.

<sup>5</sup> See OECD, 2011, 31-34.

States are bound by international law, whether by treaties or customary international laws. However, international law cannot directly bind non-state actors, including business enterprises. States are obliged to implement international laws, including International Covenants on Human Rights and any other treaties related to human rights through legislative or executive actions. The Guiding Principles recommend that states have a duty to protect human rights in all states, including non-signatory states of such treaties. States are also recommended to “*set out clearly the expectation that all business enterprises domiciled in their territories and/or jurisdiction respect human rights throughout their operations*” (Paragraph 2). Its Commentary suggests “*strong policy reasons for home States to set out the expectation that business respect human rights abroad, especially where the State itself is involved in or supports those businesses.*” This is also significant since it will promote the state’s policy regarding business on human rights even outside its territorial jurisdiction, which cannot be obliged by conventional international law.

“ [Human rights] are understood, at the minimum, as those enshrined in the International Covenants and the principles of fundamental rights set out in the International Labour Organisation’s Declaration on Fundamental Principles and Rights at Work.”<sup>6</sup>

The concept of HRDD by business enterprises is introduced in order to operationalize respect for human rights in their business activities. Paragraph 17 reads,

In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence.

This is an analogy of the due diligence business practice for financial accountability, in particular, such practices as mergers and acquisitions (M&As) or others that occur in the course of business transactions. Due diligence in human rights should be applied to transactions by confirming that the counterparts in supply chains and value chains are compliant in order to prevent adverse impacts on human rights and so avoid criticism against enterprises from the market, i.e., from consumers or investors. They may otherwise be perceived as being “complicit” regardless of whether they contribute to, or are seen as contributing to, adverse human rights impacts caused by other parties, given that they are seen to benefit from an abuse committed by these parties

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<sup>6</sup> See Paragraph 12 and its Commentary.

(Commentary in Paragraph 17 of the Guiding Principles).<sup>7</sup> Thus, it is recommended that HRDD be included in corporate risk management as a form of non-financial reputation risk along the lines of the traditional approach to due diligence procedures concerning financial risk.

When human rights are violated or abused, the victims must be compensated for damages. Access to remedy must therefore be ensured. This pertains to states at the level of protection and to the private sector entities responsible for any such violation. Thus, states are expected to establish and enhance legal frameworks, such as judicial grievance mechanisms or non-state alternative mechanisms to realize such HRDD and ensure access to remedy if enterprises are responsible for infringing on human rights. In addition, they themselves are required to establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

### **1.3 Reputation Risk in Supply Chains or Value Chains**

The Guiding Principles do not attach legally binding obligations to business enterprises so that any violation they may commit would not in itself result in legal or administrative sanctions such as fines or business suspension by judicial courts or administrative authorities. Rather, they are exposed to reputation risk due to the management, actual or perceived, of their supply chains or value chains. Their business counterparts will consider whether a possibly negative record harms their own reputation and whether to continue conducting business with such companies. They may suspend the relationship or even terminate existing agreements. Business associations might expel such notorious companies as, otherwise, these business partners or associations themselves might be accused of complicity and excluded from the market. As crucial stakeholders for any business, by responding to such accusations by local and global NGOs, the consumers and investors of such business networks are able to exercise a degree of influence in this way.

This serves as one example of how the market punishes companies that infringe upon human rights. Media, whether mass or social, and civil societies, such as NGOs or CSOs, are key in monitoring their implementation. They can function as watchdogs as well as advisors for prevention by providing “... independent external human rights expertise” (Paragraph 18 [a]). In this sense, the Guiding Principles can be categorized as *soft* law,<sup>8</sup> effective within mechanisms such as

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<sup>7</sup> Para. 17 reads “[...] Human rights due diligence: (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships.”

<sup>8</sup> Guzman and Meyer, 2010, 222, argues four complementary theories explaining why in certain circumstances state may soft law-legally non-binding commitments from which legal consequences flow.

partnerships and stakeholder collaboration for self-sustainable markets. Thus, the Guiding Principles are implemented not by legal authority, but through a *matrix of human rights governance networks*, which can work as an “intellectual adaptive system.”<sup>9</sup> In this way, polycentric governance is introduced as a means of advancing human rights in business.<sup>10</sup> As it is beyond the nation-state system while also complementary to it, they contribute to the development of *transnational* law by “[...] evolving quasi-legal human rights obligations for corporations.”<sup>11</sup>

## **2. Background and Impact of the Guiding Principles: Perspectives on Human Rights Due Diligence**

### **2.1 Beginning of the Guiding Principles: Sweatshop as Origin**

The Guiding Principles are *transnational soft law* created by the UN Human Rights Council consisting of state representatives. After the Cold War, international law failed to regulate multinational corporations for their compliance vis-à-vis human rights norms. The UN had drafted the Code of Conduct on Multinational Corporations, but it was finally not adopted in 1992. The UN Human Rights Sub-Commission on the Promotion and Protection of Human Rights adopted the “Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” in 2003, but the UN Commission on Human Rights, which was replaced by the UN Human Rights Council represented by states, failed to adopt it. Finally in 2011, by the endorsement of the Guiding Principles by the UN Human Rights Council, the UN successfully introduced a global standard on human rights and business, though it remains a non-binding instrument. Nevertheless, it directly addresses the private sector as a non-state sector, which cannot be bound by international law. Thus, together with other non-binding instruments, the Guiding Principles contribute to development of transnational customary law of merchants on human rights as new *Lex Mercatoria*.<sup>12</sup>

The history of the struggle for human rights protection against business enterprises dates back to the emergence of capitalism in the industrial revolution of the 19th century. Exploitation of workers in *sweatshops* or *sweat factories* was criticized. The genesis of business and human rights

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<sup>9</sup> Kelly, 2011, 1 and 6-9.

<sup>10</sup> Prenkert and Shackelford, 2014, 452 and 458. Backer, 2015, 2 proposes of a formal treaty mechanism in the place of the “soft” law polycentric approach of the Guiding Principles. In fact, the UN Human Rights Council’s working group is currently examining the treaty mechanism.

<sup>11</sup> Shields, 2014, 129.

<sup>12</sup> This is discussed in the context of developing commercial arbitration as an analogy of *Lex Mercatoria* of the medieval merchants’ customary law (see Sweet, 2006). As human rights themselves are *erga omnes* rights, they will be incorporated into commercial laws.

can therefore be seen as having stemmed from labor issues that arose under a capitalist economy that we refer to today as the market economy, which has driven globalization following the Cold War.

## **2.2 Post-Cold War Globalization: Race to the Bottom**

In the 1990s, Bretton Woods Institutions promoted the market economy toward former socialist countries by labeling these as ‘countries in transition’ or ‘transitional countries/economies.’ The European Bank for Reconstruction and Development (EBRD) was established in 1991 to promote such a market economy in tandem with the promotion of human rights and multiparty democracy. The World Bank family, including EBRD, assisted developing countries by promoting market economies in line with the so-called Washington Consensus and within the context of modern law.

As a result, free trade and foreign investment have been considered to be promising methods for development under the guidance of neo-liberal economists for transitional economies, including Jeffrey Sachs and Hernando De Soto. At the same time, UNDP proposed using the concept of human security in its 1994 Human Development Report to address the social injustice contributing to internationalized civil wars or what Kaldor coined *new wars*<sup>13</sup> and advocated for a rights-based approach in development in order to complement a nation-state system that can no longer control the power of the market.

Global competition, as it is practiced in a system of free trade, seeks cheap labor and favorable tax havens. The “race to the bottom” phenomenon, in which governments deregulate the business environment or taxes in order to attract or retain economic activity in their jurisdictions, now prevails all over the world. As a negative impact of globalization, such deregulation causes lower wages, poorer working conditions and environmental destruction. Thus, globalization is criticized as a form of neo-colonization that widens the gap between the rich and poor and further impoverishes the vulnerable and marginalized.

## **2.3 The Anti-globalization Movement**

The WTO’s efforts to promote free trade are criticized by the anti-globalization movement since the market is in fact dominated and manipulated by the rich and powerful. The poor and powerless, on the other hand, are for the most part excluded from the market while community-based or local economies, in which the safety nets that were once provided, have been all but destroyed. Global NGOs mobilizing anti-globalization or anti-sweatshop campaigns accuse

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<sup>13</sup> Kaldor, 2012.

multinational corporations of complex, consolidated and structured human rights violations, in particular aggressive land grabbing, ignoring labor rights with unacceptable levels of exploitation in conjunction with environmental destruction, leading to increased child labor, human trafficking and slavery and even armed conflicts in developing countries.

A significant number of global companies, including the Walt Disney Company, Gap, Nike, Reebok and Adidas, have been accused of using sweatshops in developing countries, in particular, using child labor. Global boycott campaigns against these companies have been mounted, sometimes causing sales or stock prices to suffer as a result. More recently in China, Apple Inc. was criticized for being responsible for serious injuries due to a toxic chemical workers use in making the signature slick glass screens of the iPhone at its suppliers' factories in China. Its sales and stock price dropped dramatically following news of the incident. After investigating its suppliers, Apple released a report to confirm that this was a "core violation" of workers safety in February 2011.<sup>14</sup> Apple also found that one of its suppliers had dumped toxins into a local river. They then worked with NGOs and the local authorities to put preventive measures in place.<sup>15</sup> Japanese manufacturers have also been targeted as their factories and suppliers in China allegedly caused environmental pollution and labor exploitation.<sup>16</sup> The Chinese market has also reacted quickly through its social media, forcing companies to improve their suppliers' operations. Traditionally, the fair trade movement has advocated against exploitation in coffee and other cash crop plantations in developing countries. Nevertheless, leading economists like Jeffrey Sachs and Paul Krugman criticize such anti-sweatshop movements, claiming that they are necessary for development and enabling a higher standard of living for local people.<sup>17</sup> A key challenge of the globalized market economy is therefore to strike a balance between development and human rights (including labor and environmental rights).

#### **2.4 Development of Human Rights Norms for Business towards the Guiding Principles**

In this context, the UN tried to introduce international law that would bind such multinational corporations to respect human rights, protect labor rights and uphold environmental standards. But this treaty-based hard law approach was not successful. Following this, after being proposed by

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<sup>14</sup> Apple released an order to stop using chemicals and to improve safety conditions at one of its plants (Barboza, February 22, 2011).

<sup>15</sup> Institute of Public Environmental Affairs (IEP), 2013.

<sup>16</sup> Oji Paper Co. Ltd.'s factory was accused of causing water pollution by neighboring communities and internet users in China in 2012. Human Rights Now (a Japanese international human rights NGO) accused Fast Retailing Co. Ltd. known as UNIQLO of using sweatshops as its suppliers in China (<http://hrn.or.jp/eng/news/2015/02/11/joint-statement-go-beyond-a-short-term-improvement-in-uniqlos-suppliers/> accessed on August 14, 2015.).

<sup>17</sup> Myerson, 1997.

former UN Secretary-General Kofi Annan at the Davos conference in 1999, the UN Global Compact (UNGC) was formed to appeal to the private sector to commit to the UN principles on these issues in 2000. Later, anti-corruption was also adopted as the tenth principle of the UNGC to be followed by the private sector. One reason for this was the escalation of corruption brought on in part by a combination of the market economy and weak governance in emerging markets. Even when the state establishes laws to address private-sector violations of human rights, labor rights, environmental degradation and corruption, the pre-existing corruption impedes their proper implementation and enforcement. Thus, such hard law does not work without commitment in such circumstances. Rather, non-binding soft law could be more effective if the market players self-regulate their own rules of play along with such guiding principles

As for labor rights, the ILO adopted the Declaration on the Fundamental Principles and Rights at Work in 1998. This was supported by a framework for global free trade, the WTO Ministerial Conference held in Singapore in 1996.<sup>18</sup> The ILO then adopted the revised Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in 2006, taking into account the Declaration on the Fundamental Principles and Rights at Work in 1998. The US has been publishing the “Trafficking in Persons Report” annually by the State Department based on the Trafficking Victims Protection Act (TVPA) 2000.

Regarding corruption, hard law has been developed in the context of combatting transnational organized crime since states can achieve consensus more easily. The OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions was adopted in 1997 and the United Nations Convention against Corruption was adopted in 2003. As for national law, the United State revised the Foreign Corrupt Practices Act (FCPA) of 1977 in 1998 so that it could be applicable to any company listed on stock exchanges in the US. Many global companies, including Japanese companies, were in fact punished by this Act. The United Kingdom adopted “The Bribe Act 2010,” which pertains to the bribing of private persons, also has extra-territorial jurisdiction depending on the location of a company’s branch office in the UK. Common law lawyers are growing their legal market by means of expanding the jurisdiction of their laws to the global market practically all over the world.

The UN-based development paradigm also requires the participation of non-state actors. The UN Millennium Declaration at the UN Millennium Summit in 2000 invited the private sector, NGOs and civil society to participate in achieving the Millennium Development Goals (MDGs). Thus, the

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<sup>18</sup> The 1996 Ministerial Declaration made weak labor protection accompanying human rights violation a basis for restricting imports within the WTO multilateral system (Brown *et al.* 2011, 37).

UN approached the private sector to promote UN ideas and principles, making the event a historic one.<sup>19</sup>

## **2.5 Impact of the Guiding Principles and the Human Rights Due Diligence Perspective**

In 2011, when the UN Human Rights Council adopted the Guiding Principles, the OECD revised its Guidelines for Multinational Enterprises by adding a new section on human rights, including paragraphs on HRDD. Regarding conflict minerals, the OECD also adopted the Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas in 2011. The European Commission (EC) introduced a new definition of CSR and a new policy to implement the Guiding Principles in 2011,<sup>20</sup> following up with publications on human rights guidance for three business sectors.<sup>21</sup> The EC then published the Introductory Guide to Human Rights for Small and Medium-sized Enterprises (SMEs) in 2012.<sup>22</sup> UNICEF, UNGC and Save the Children jointly developed the Children's Rights and Business Principles in 2012.<sup>23</sup>

The Guiding Principles also seem to have influenced the development of hard law, such as the US Dodd-Frank Act (DFA) 2010 and the California Transparency in Supply Chains Act (TSCA) 2010. As the Kimberly Process deals with conflict diamonds, the DFA was introduced to monitor and control the trading of conflict minerals originating from the Democratic Republic of Congo by imposing reporting obligations on companies listed in the US SEC. The California TSCA obliges large-scale retailers and manufacturers in the State of California to report their efforts to eradicate forced labor, child labor, human trafficking and slavery in their supply chains.

On the other hand, the private sector also promoted its own voluntary code of conduct. CSR, which was strengthened by the EC, was to be practiced voluntarily in contributing to sustainable markets. The fair trade movement was also developed through the collaboration of civil society and the private sector. The Guiding Principles influenced ISO26000 for Social Responsibility, including a section on HRDD, adopted in 2010. John Ruggie, the UN Secretary-General's Special Representative for Business and Human Rights, was involved in the process of drafting ISO26000. Although ISO26000 does not follow the Guiding Principles per se, it claims to incorporate the

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<sup>19</sup> The Sustainable Development Goals (SDGs), which were adopted by the UN General Assembly on 25 September 2015 as development of MDGs provide the Goal 17 of Global Partnership. Their Target 17.15 and 17.16 address the Multi-stakeholder partnerships, in which effective public, public-private and civil society partnership should be encouraged and promoted (see: <https://sustainabledevelopment.un.org/?menu=1300> accessed on October 25, 2015).

<sup>20</sup> European Commission, 2011. Paragraph 4.8.2, 14.

<sup>21</sup> [http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item\\_id=6711](http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=6711) accessed on August 14, 2015.

<sup>22</sup> [http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/human-rights-sme-guide-final\\_en.pdf](http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/human-rights-sme-guide-final_en.pdf) accessed on August 14, 2015.

<sup>23</sup> <http://childrenandbusiness.org/> accessed on August 14, 2015.

international code of conduct.

The Global Reporting Initiative (GRI) issued the revised (G4) Sustainability Reporting Guidelines in 2013. It includes a subcategory on human rights in the category of society. It provides twelve indicators for ten aspects of disclosure: (1) investment, (2) non-discrimination, (3) freedom of association and collective bargaining, (4) child labor, (5) forced or compulsory labor, (6) security practice, (7) indigenous rights, (8) assessment, (9) supplier human rights assessment and (10) human rights grievance mechanisms.<sup>24</sup>

The Guiding Principles had an impact on these state and non-state initiatives on human rights and business not only at the global level, but also at the regional level, including Japan.<sup>25</sup> Can the HRDD, which was introduced in these non-binding instruments, yield positive results, improve business practice and enhance the human rights situation in developing countries in this globalized market economy?

### **3. Case Study of ANZ Bank in Cambodia**

#### **3.1 Land Grabbing in Cambodia**

The author participated in the United Nations Transitional Authority in Cambodia (UNTAC), an epoch-making UN peacekeeping operation, as a human rights officer onsite for over one year during 1992 and 1993. After departing from Cambodia at the end of the mission, I have occasionally returned there to monitor the human rights situation. Recently, serious human rights violations and abuses have occurred in conjunction with land grabbing. Most notably, foreign investment granted the Economic Land Concession (ELC) for plantation under the Land Law 2001, which is related to human rights and labor rights infringements as well as environment destruction backed by large-scale corruption. ELC grants a lease period of 99 years for “state private land” from the authorities. This has caused land disputes, mostly land grabbing, all over Cambodia. Inhabitants whose land is not registered are suddenly forced to evacuate from the land they have lived on and cultivated as they hold no title to it under the Land Law 2001. The government considers such unregistered land as state private land, in which economic land concessions are granted to private

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<sup>24</sup> GRI, 2013, 70-75.

<sup>25</sup> Japan Federation of Bar Associations adopted Guidance (Handbook) on Human Rights Due Diligence (in Japanese: *Jinken Du Deligence notameno Guidance [Tebiki]*) 2015 (JFBA, 2015). It will be considered at the Business Policy Forum, Japan (*Kigyo Katsuryoku Kenkyuusho*), affiliated with the Ministry of Economy and Industry, which conducted researched on business and human rights in 2012 and published its final report: Report on Issues Concerning Business and Human Rights in Emerging Countries (*Shinko koku deno Business Tenkai niokeru Jinken Sonchou no arikata ni tsuitemo Chousa Houkokusho*) 2013. See its English Summary, Business Policy Forum, Japan, 2013.

companies to develop huge plantations or factories as foreign investments or investment for exporting products under the law. It is said that almost one third of all the cultivated land has already been given to the rich and powerful in the form of economic land concessions.<sup>26</sup>

In Kampong Speu Province of Cambodia, a Thai affiliated businessperson, who is also a Cambodian Senator, built a sugar cane plantation for exporting sugar to Thailand and other countries. His company, Phnom Penh Sugar Co. Ltd., claims to have obtained the land from the government through an economic land concession. The farmers in villages in the Om Laing commune, Thpong district have long been living on the land and cultivating it, and are therefore refusing to leave. Some village leaders protesting the eviction were arrested on charges of damaging the company's property, which was located in the disputed land. The villagers were protesting against the company and refused to evacuate. These leaders were released from detention after the villagers demonstrated by blocking the national highway no. 4. However, the case remains unsettled. The company has not allegedly provided the villagers with adequate compensation for the land they lost. Even if they were to be given substitute lands, these would be in areas too remote to live in and unsuitable for cultivation. Their lives have therefore effectively been destroyed.<sup>27</sup>

### **3.2 ANZ Bank Accused of Complicity in Human Rights Abuse**

This case received extensive international media attention in January 2014. Oxfam Australia, in its report on the funding of land grabbing, criticized ANZ Bank's loan to Phnom Penh Sugar Co. (PPS), which runs a sugar factory in a plantation on land granted by the ELC. PPS was accused of environmental destruction and human rights violation against the farmers, who were violently forced to evacuate, including the use of the military, inadequate compensation and exploitation of laborers, and the use of child labor.<sup>28</sup>

ANZ Bank lends tens of millions of dollars through its subsidiary, ANZ Royal Bank, which is a joint venture with another Cambodia tycoon close to Prime Minister Hun Sen since 2010. A social impact assessment, an example of HRDD in practice, was conducted in 2013 as an audit carried out by the International Environmental Managing Company at the request of PPS. It found that PPS failed to perform a proper social/environmental impact assessment. PPS failed to implement the environmental, health and social management programs required by ANZ Bank, which adopts the

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<sup>26</sup> Sato, 1997, 36-38.

<sup>27</sup> Assisted by The Cambodian Human Rights and Development Association (ADHOC), I visited the village. I interviewed the leaders and inspected the disputed land and the substitute land on 2 June 2010.

<sup>28</sup> Oxfam Australia, 2014, 33-35.

Equator Principles<sup>29</sup> and its own HRDD procedures, to meet its ethical lending obligations recommended in its own audit commissioned by ANZ Royal Bank.

According to Oxfam Australia, the ANZ Royal Bank's 2010 audit team did not visit the resettlement sites of the local farmers, who were forcefully evicted. I visited the village to interview the village leader and the resettled farmers in a remote mountain dwelling three times since 2010. The families I visited on 2 June 2010 were living on a small patch of land with neither water nor crops. Their land was far from the main road, which was some 10 kilometers away. Their lives were quite hard and their compensation was minimal, putting the integrity of the 2010 audit in question. The 2010 audit was a mere necessity for ANZ Bank to comply with its obligations as a signatory to the Equator Principles.

### **3.3 Access to Remedy**

ANZ Bank refuses requests for compensation by local people in Thpong district for their damages as it received a repaid loan from PPS and terminated the relationship with PPS after the accusation by Oxfam Australia. This seems inconsistent with the HRDD as it failed to provide for or facilitate their access to remediation through legitimate processes (Paragraph 22 of the Guiding Principles).

Then, on behalf of the affected farmers, two NGOs, Equitable Cambodia (a Cambodian NGO) and Inclusive Development International (a US-based NGO), jointly filed a complaint against ANZ Bank and ANZ Royal Bank for its breach of the OECD Guidelines by contributing to human rights abuses through their actions and omissions, and failing to take reasonable measures to prevent or remedy them at the Australian National Contact Point in October 2014 under the OECD Guidelines.<sup>30</sup> ANZ Bank responded by sending a letter dated 20 October 2014 to the communities via the Business & Human Rights Resource Centre in London. Denying its responsibility, it claimed that it had been working to encourage the resolution of the issues by: (i) remaining in contact with the Cambodian government and European Union officials, and (ii) offering the ANZ Bank's support to the Ad-Hoc Committee on the issues, consisting of representatives from the EU, the Ministry of

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<sup>29</sup> This is a voluntary code adopted by financial institutions around the world that have agreed to only fund projects that adhere to "sound social and environmental standards" in 2003. In June 2013, the Equator Principles III were made available. Currently 80 financial institutions in 35 countries have officially adopted it, covering over 70 percent of the international Project Finance debt in emerging markets (<http://www.equator-principles.com/index.php/about-ep/about-ep>, accessed on August 14, 2015).

<sup>30</sup> For details of complaints, see Inclusive Development International (IDI) and Equitable Cambodia (EC), 2014. Also see the IDI homepage: <http://www.inclusivedevelopment.net/what/advocacy/cambodia-anz-backed-sugar-land-grabs/> (accessed on May 26, 2015)

Commerce, provincial administrations and the sugar industry.<sup>31</sup>

The reason why the EU is also involved in the negotiation is that its EBA (Everything But Arms) preferential trade scheme to least developed countries is now being reviewed for Cambodia since it is accused of doing harm to the poor rather than supporting them there.<sup>32</sup> When I visited the village leader to interview with him and update this case in 2011, he told me that he had been invited to Brussels and cities in Germany to appeal to the public to boycott “bloody and bitter sugar” from Cambodia. Thus, the exempted tariff applied to importing the commodity seems to be a focal point of the pressure to redress the farmers in Cambodia. The case also seems to have received reference in the ILO-backed Arbitration Council in Cambodia, a council responsible for mediation.<sup>33</sup>

### **3.4 Real Issues from a Human Security Point of View: How to spare children from absolute poverty?**

As in the case of the negative impacts caused by Oxfam Australia’s criticism and the following campaigns against global companies, effective remedy was most probably not provided for the local victims. This is especially true for labor-intensive manufacturers, such as shoemakers and others in the apparel industry, given the local suppliers’ record of human rights violations and other form of abuse. Cutting off the relationship with PPS caused the allegedly exploited laborers, including child laborers, to lose their jobs and thereby their means of survival.

The Cambodian government and judiciary are unlikely to bring any justice to bear due to their weak governance and corruption based on vested interests with tycoons who collude with political elites to be connected with foreign companies. Losing their access to income, these children may even be sold by their parents as they may otherwise not be able to afford to take care of them. It should be noted here that child trafficking is not uncommon in this country.<sup>34</sup> These children are doubly victimized due to the absence of an alternative for survival. Their living conditions leave them vulnerable to NGOs’ decisions such as announcing human rights violations by foreign companies if such accusations ultimately fail to consider local needs for human security.

The so-called global standards, including the Guiding Principles, which were developed in New

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<sup>31</sup> ANZ Bank (Ben Walker, Head of Sustainable Development), 2014, 2. See Homepage of Business and Human Rights Resource Centre: <http://business-humanrights.org/en/cambodia-displaced-villagers-bring-oecd-complaint-against-anz-for-allegedly-financing-project-linked-to-forced-land-confiscation-anz-responds> accessed on August 14, 2015.

<sup>32</sup> Equitable Cambodia and Inclusive Development International, 2013.

<sup>33</sup> Interview with an arbitrator of the Council in Phnom Penh on 14 November 2014.

<sup>34</sup> See CNN report: <http://edition.cnn.com/interactive/2013/12/world/cambodia-child-sex-trade/> Accessed on May 27, 2015. I interviewed several Cambodian children, who were sold by their parents and refused by them after they were rescued from Bangkok at Save the Children’s Smile Association (SCSA) in Siem Reap in 2012.

York and Geneva, are not necessarily the most functional in terms of implementation in the field, in developing countries such as Cambodia. The voiceless masses in these countries are not properly represented in the process of developing the standards that later affect them. They are then ignored if and when the principles are actually applied in the field, so far removed from the center of the market. The local context is in fact not duly considered when they are developed in faraway places but applied to the day-to-day lives of villagers in rural areas. This gap has to be identified and addressed in the implementation of the Guiding Principles. How can the market hedge exploitation risk and rent-seeking opportunities by mitigating such gaps in applying HRDD? If these are not sufficiently taken into account, the *unintended consequences* will continue to reduce the human security of the local population in developing countries.

Locally, the individualistic, adversarial and competitive nature of the market economy is challenging what has been a neo-patriarchal and paternalistic society. The sudden introduction of the market economy in traditional pre-modern societies seems to have increased and even escalated local corruption. The human rights discourse is also double-edged as it creates human rights imperialism based on the modern European model without due consideration of local culture and social reality. In line with recent views on legal pluralism, the rule of law is being reconsidered in light of customary law to facilitate coexistence with modern state law.<sup>35</sup> While the value of human rights itself is universal, the approach to how it should be translated into practice varies, depending on local context. Without due consideration of local contexts, the Guiding Principles could become harmful to the local people. These people also have a right to participate in their own development, through which they can promote their own human rights.

Global standards such as the Guiding Principles are not limited to their effects after being put into practice, but are also sometimes manipulated by local authorities to strengthen or justify their power to rule in their local context. The global discourse must therefore be interpreted within and adapted to local contexts in the practice of law reform assistance in developing countries.<sup>36</sup> Responding to international criticism against ELC due to the prevailing land grabbing and human rights abuses, Prime Minister Hun Sen issued the so-called Directive 001 in 2012 to suspend ELC and sent a large number of students to volunteer for land registration. In fact, however, the hidden agenda behind this initiative was allegedly to support his election campaign and was even intended to promote and legitimize *illegal* land grabbing by registering indigenous peoples' *collective* land.<sup>37</sup>

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<sup>35</sup> Tamanaha, 2011, 13.

<sup>36</sup> Gillespie, John and Pip Nicholson, 2012, 10-15.

<sup>37</sup> ADHOC, 2013, 20-25.

In addition, the real impact of foreign assistance on governance, in particular that of law reform assistance, must be questioned. The Land Law 2001 was assisted by the Asian Development Bank. The registration system introduced by the Law had in fact adverse effects on poor farmers since they could not claim their titles for the land they had long cultivated without registering. Unregistered land is considered state-owned land, which can be granted to ELC. The World Bank assisted the land registration, but its assistance was suddenly terminated due to the alleged corruptions in the process. Thus, poor farmers, who cannot fulfill the registration procedure, are left vulnerable and without any title. Poor farmers also cannot use litigation in courts due to the new Code of Civil Procedures, which was assisted by JICA. According to ADHOC (Cambodia Human Rights and Development Association), poor farmers cannot deposit litigation fees required for filing a lawsuit. While the Code provides for exemption of such deposits in cases in which it is unaffordable, they have to first be recognized as such by the local authorities in order to qualify for exemption. In practice, they have to give up as they have no means of bribing these local authorities.<sup>38</sup> Not only the corruption of such administrative authorities, but also the corruption of the judiciary is notorious in Cambodia. No such thing as access to justice is actually ensured. So far, from a human security point of view, such governance assistance seems to cause harm to vulnerable people in the field.

#### **4. A Human Security Approach and a Human Security Index**

As is the case in Cambodia, the positive effects of HRDD have not yet been clearly demonstrated. The case of ANZ Bank should be carefully monitored through action research. Governance assistance, including law reform assistance, cannot be evaluated as effective for vulnerable peoples' access to justice by strengthening the rule of law. Kelly's *matrix of human rights governance network*, which has become an "intellectual adaptive system," does not seem to work properly for effective HRDD.<sup>39</sup> A human security approach, however, can be considered for better implementation of the HRDD for local vulnerable people, in particular, their access to remedy. For the human security approach, a human security index could be proposed to facilitate the implementation of HRDD.

##### **4.1 A Human Security Approach**

Human security, which was first introduced by the UNDP in its Human Development 1994, is

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<sup>38</sup> Interview with Mr. Thun Saray, President of ADHOC in Phnom Penh on 14 November 2015.

<sup>39</sup> Kelly, 2011, 1 and 6-9.

addressed to the people's freedom from fear and from want, bridging the gap between peace and development. This concept takes the viewpoint of vulnerable people. Its approach is based on their protection and empowerment. Human security is concerned with the downside risk of vulnerable people into consideration. In particular, this concept promotes international/transnational cooperation for their protection and empowerment as well as contributions and the participation of the private sector and civil society as non-state actors.<sup>40</sup>

UNDP is promoting a (human) rights-based approach to development. Human rights are based on individualism, which are not necessarily appropriate or practical in many developing countries. A human security approach, on the other hand, would be more flexible and context-oriented. It would provide for cross-disciplinary and comprehensive pictures so as to be more appropriate and realistic for people living in neo-patriarchal paternalistic societies. Thus, it can introduce more community-centered and comprehensive perspectives in development and investment in remote areas of developing countries. Care for vulnerable people should be given higher priority in impact assessments carried out under HRDD. Local people should be included in designing development and investment projects so that they also benefit from them. Education of children should also be arranged so as to facilitate decent work for local people. To ensure the benefits of local people, FPIC (Free Prior Informed Consent), which is proposed for the protection of indigenous people's rights in the context of environmental protection, can be introduced in such projects.<sup>41</sup> In this process, a negotiation mechanism with independent third-party participation should be made available for the prevention of conflicts.

The human security approach promotes ad-hoc dispute processing by stakeholders: local people assisted by lawyers and NGOs, government and foreign investors. These practices should be accountable to a due process, but also based on traditional, informal and customary practices. Even if such practices seem incompatible with human rights and democratic points of view, they should not be dismissed out of hand, but rather modified and reformed from multiple viewpoints. From the perspective of global standards, even corrupt activities should be controlled and mitigated by potentially realistic approaches that are compatible with the local context to reduce such opportunities and address root causes.<sup>42</sup>

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<sup>40</sup> United Nations General Assembly, 2010, para. 30 at 8 and para. 53 at 13.

<sup>41</sup> See Deisley and Lipsett, 2013, 1-2.

<sup>42</sup> These points are reflected in the Goal 16 of "Access to Justice for All" of SDGs in particular, at the Targets 16.3 (promotion of the rule of law), 16.5 (sustainable reduce of corruption), 16.7 (responsive, inclusive participatory and representative decision-making at all levels) and 16.8 (broaden and strengthen the participation of developing countries in the institutions of global governance.).

## **4.2 A Human Security Index as a Preventive Measure: Databank, Mapping and Networking**

Realistic approaches are also important for the sake of prevention. ANZ Bank failed to arrange a proper social impact assessment since ANZ Royal's assessment team even did not visit local people at the sites in question. Such an assessment should have provided PPS and ANZ Royal a chance for dialogue with local people and for the latter to be included in the development project. Local knowledge was not sufficiently tapped nor properly analyzed in assessing the situation. Local people were excluded and even considered no more than the topic of the assessment. Human rights should not be an ideology for judging how local people are to be governed. Rather, local people's participation is required to define them and prioritize human rights.

A human rights database and mapping in local contexts are both required in assessing the human rights situation in the areas of suppliers' operations from the viewpoint of local people. GRI's Sustainable Reporting Guidelines and its Human Rights Performance Indicators as well as the Human Rights Compliance Assessment Quick Check by the Danish Institute of Human Rights could be referred to in the assessment process.<sup>43</sup> Human rights are one of the factors needed to evaluate the human security of these vulnerable people. They cannot be separated from their local communities, nor the places where they live. The level and way of living and working are also different from those of ours in advanced countries. While this gap should not be manipulated as a way of exploitation, it should also not be flatly refused as inhuman without considering the different contexts. Respecting human rights includes respecting their way of life on the other hand. Nevertheless, their way of life is often ignored in a superficial, dogmatic assessment as human rights are understood as a universal value based on individualism without due consideration of the context and conditions of the people. Thus a value-free and comprehensive measure should underpin the human security index. Such an index should be developed for practical use in implementing a human security approach to the HRDD at the local level.

Considering the principles of the UNGC, such an index should cover risks in human rights, labor rights, environmental protection and governance (for anti-corruption). In addition, from a human security point of view, deprivation and conflict risks are also included. Local data collection and mapping through participation of local civil society and the private sector as well as local researchers should be aggregated. Collaboration through the networking of global and local stakeholders is crucial to create such a platform.

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<sup>43</sup> Also see Hamm and Scheper, 2012.

In addition, the human security index should be developed for rating business enterprises from a viewpoint of how they respect human security based on human rights, labor rights, environmental standards, governance, poverty reduction and conflict sensitivity. Such a human security index for CSR will be useful for businesses to select more suitable business partners, which are not necessarily low-cost options in the short-term, but trustworthy for more long-term sustainable business.

Human security has been criticized at times as vague and thus impractical. It is not a concept merely for creating yet another sector or boundary, but rather to connect the parts of a more comprehensive picture to better consider the issues in a well-rounded and holistic way so they can be addressed in practice. In this sense, it should combine and consolidate the existing relevant indices to evaluate human security holistically. The human security index is expected to highlight threats or risks vulnerable people face by taking their human security into special consideration in investment and development processes. In this way, it will not only address negative elements, but also the potentially positive contribution by business. Drawing on these strengths, it may serve to promote business at the base of the pyramid, inclusive business, by means of rating enterprises on their human security performance, thereby promoting more equitable and sustainable markets, and potentially even contributing to the development of a New Public Management. This is now required for implementation of the historic 21st century paradigm of the SDGs beyond the nation-state system, which has been promoted by the human security idea last decade.

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## **Identity as a Form of Human Insecurity: The Case of Religious Minorities in Pakistan**

Zulfiqar Ali <sup>1</sup>

### **Abstract**

Islamic extremism and militancy poses a serious human security threat to Pakistan. Its impact has been particularly disastrous for the religious minorities who constitute about 20% of the population. Ahmadis, Christians, Hindus, Shias and others are being increasingly targeted for their religious beliefs by Islamist extremist outfits. This paper employs critical framework- most notably, the Post-secular approach - on human security to trace out the causes of this insecurity of religious minorities in Pakistan. In the process, it documents the rise of Islamism in Pakistan to explain the “Other-ing” of religious minorities that has perpetuated their identity-based institutionalized discrimination, socio-economic insecurity, and political marginalization through both non-state actors such as the extremist sectarian outfits and the state itself. Secondly, it uses a critical framework to analyze the *securitization* of certain laws and constitutional amendments that threaten human security of religious minorities in Pakistan. Thirdly, it explicates the efficacy of the post-secular approach in categorizing the identity-based insecurity of religious minorities in Pakistan. Finally, it uses the Post-secular approach to engage with sources of Islamic history and theology to alleviate human security concerns of religious minorities in a modern Islamic state such as Pakistan.

### **Keywords:**

Identity, religious rights, institutionalized discrimination, post-secular human security, Islamic jurisprudence.

## **1. Introduction**

Pakistan faces myriad problems of peace and security exacerbated by its stagnant economy and fledgling democracy. Since its involvement in the US-led coalition in the “war on terror”, it has suffered losses of about 49,000 lives, and experienced a deteriorating law and order situation in the country<sup>2</sup>. In the past decade, the country has also witnessed a proliferation of Islamist militant outfits such as the Tehrik-e-Taliban Pakistan (TTP), Laskar-e-Jhanghvi (LeJ), Sipah-e-Sahaba (SSP), and others, that not only pose a serious existential threat to the State itself but have also been instrumental in their crusade against the members of religious minorities comprised mainly of the Ahmadis, Christians, Hindus, and Shias in the recent years. A minority group is defined here as:

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<sup>2</sup> Waterman, 2013.

*A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.*<sup>3</sup>(Italics mine)

The usage of religious minority instead of non-Muslim minority serves two important functions. First, it helps explain the plight of the Ahmadiya community who consider themselves Muslim but are legally non-Muslims in Pakistan. Second, it allows us to include Muslim minority groups such as the Shias who are being increasingly targeted on the pretext of heresy like the Ahmadis.

The repeated pleas for protection by these communities and civil society groups have fallen on deaf ears as the state has done little to alleviate their insecurity, and has in fact instituted several constitutional amendments subjecting them to *institutionalized*<sup>4</sup> or structural forms of socio-economic discrimination.

This paper aims to engage with critical perspectives, especially the post-secular approach, in Human Security discourse to explain the state of this human insecurity of religious minorities in Pakistan. In the process, it seeks to explain the rise of “Islamism” in Pakistan during the past few decades through a brief historical analysis of Islamism in the Muslim World and its impact on the rising tide of sectarianism in Pakistan leading to the identity-based persecution of religious minorities.

## **2. Re-defining human security: From a Critical to a Post-Secular Framework**

To begin with, the concept of human security emerged in the early 1990s and was first embodied in the United Nations Development Program’s (UNDP) *Human Development Report* (HDR) published in 1994 and was defined as the process of “widening the range of people’s choices” and making sure that “people can exercise those choices safely and freely – and that they can be relatively confident that the opportunities they have today are not totally lost tomorrow”.<sup>5</sup> According to HDR (1994), human security comprises of two components: “First, safety from such chronic threats such as hunger, disease, and repression. And second, it means protection from sudden and hurtful disruptions in the patterns of daily life-whether in homes, in jobs or in

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<sup>3</sup> OHCHR.

<sup>4</sup> The author has italicized keywords such as these and other important non-English words and concepts throughout the paper to emphasize their importance.

<sup>5</sup> Shinoda, 2004, 9-11.

communities.”<sup>6</sup>

While previously vouchsafed in terms of “national security” or “state security”, UNDP’s HDR shifted the focus of security from that of the State to the individual. In line with this report, human security premised an individual as the “only irreducible focus of human security” and made the claims of all other referents, most notably the State as secondary to that of the individuals.<sup>7</sup>

However, one of the most prominent critiques of human security paradigm is that far from *securing* the sovereignty of individual citizens over that of the state, and protecting their civil liberties, the human security discourse has been co-opted by the state itself to further “its own hegemonic narratives and goals rather than challenging or transforming them.”<sup>8</sup> In the same vein, theorists such as Buzan et al argue that security discourses often allow the states to securitize certain political issues and transform them into “a special form of politics or high politics”<sup>9</sup>. As such, *securitized* issues become exempt from public debate and criticism under the guise of national security and/or national ideology. In the case of religious minorities in Pakistan, the securitization discourse helps explain the specific constitutional amendments such as the law against Blasphemy (explained later) that have been *securitized* by the state amid political pressures from the religious lobby and are therefore, exempt from public debate allowing miscreants to abuse the law in harassing religious minorities.

Secondly, a group of theorists dubbed as Critical Theorists<sup>10</sup> contend that the project of Human Security has largely centered on protecting and constructing “rational, autonomous and self-interested individuals out of the great culturally differentiated mass of humanity”. This, it is claimed, has reduced the agency of human security to the protection of “bare life”. Giorgio Agamben likens bare life to the Greek term *zoe* which refers to the simple life of existence, a life that can be *killed* but not yet sacrificed, as opposed to *bios* which refers to a qualified life full of dignity and that is, consequently, *worthy of sacrifice*<sup>11</sup>. According to these theorists therefore, the purpose of human security should be to recover the “bios of human life.”<sup>12</sup> The “Critical” security studies may in this light be seen as attempting to recover the bios of human life through categorizing human security as “emancipation”- the ability to choose, and operationalize those choices freely without the

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<sup>6</sup> UNDP Human Development Report, 1994, 23.

<sup>7</sup> Introduction: Protecting Human Security in a Post 9/11, Shani, 2007, 4-6.

<sup>8</sup> Johns, 2014.

<sup>9</sup> Shani, 2010, 6.

<sup>10</sup> Here I am referring to a new theorists such as Barry Buzan, the author of *People, States and Fear: The National Security Problem in International Relations*, 1983, who combine security studies with critical theory of the Frankfurt School and others.

<sup>11</sup> Agamben, 1998.

<sup>12</sup> Shani 2014a, 126-27.

human or physical constraints. Critical theorists classify war, poverty, poor education and political oppression as constraints on security that need to be mitigated to ensure true human security. Here too, though, security as emancipation is weighted in secular terms devoid of religio-cultural traditions that consider individuals as “unencumbered” from their religious and cultural affiliations which, arguably, provide them meaning and purpose in life, and as such, end up perpetuating the same notion of security as “bare life”, which they were attempting to resolve in the first place.<sup>13</sup> Since emancipation underscores different ontological roots in various religious traditions, the secular human security discourses bypass or worse, render it unimportant. Moreover, for Ratzinger, the unmitigated faith in [secular] reason in the past has unleashed tragedies such as the nuclear warfare and its insatiate drive for capitalism has reduced human beings to “products.” Therefore, reason too should “learn a willingness to listen to the great religious traditions of mankind” or else it becomes destructive.<sup>14</sup> Furthermore, Casanova emphasizes the futility of the secularization model as understood in a Eurocentric way as the triumph of “unbelief” (reason) over “belief” (religion) borne out of a particular socio-political climate of Modern Europe as universally applicable. As such, it becomes disastrous “once it is then transferred to other world religions and other civilizational areas with very different dynamics of structuration of the relations and tensions between religion and world or between cosmological transcendence and worldly immanence.”<sup>15</sup>

These apparent failures of an absolute faith in “secular reason,” triggered by the revival of religion following 9/11, have encouraged otherwise secular philosophers such as Habermas to concede some ground to religion in the international relations theory. According to him, although political liberalism is a “non-religious and post-metaphysical justification of the normative bases of the democratic constitutional state” and can therefore “satisfy its own need for legitimacy in a self-sufficient manner... independent of religious and metaphysical traditions, the inclusion of and engagement with religious claims in the public sphere can strengthen the legitimacy of the liberal state. For Habermas, “[p]hilosophy has a good reason to learn from religious tradition” because “the mutual compenetration of Christianity and Greek metaphysics... promoted the assimilation by philosophy of genuinely Christian ideas” such as responsibility, emancipation, and autonomy but these terms have been hollowed out of their origins and have been subsumed by secular ideas<sup>16</sup>. However, he clarifies that religious expressions must be translated into secular terms to make them intelligible to all and for that to happen the “religious side must accept the authority of natural reason

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<sup>13</sup> Shani 2014b, 126-132.

<sup>14</sup> Ratzinger, 2006, 77-78.

<sup>15</sup> Casanova, 2011, 63.

<sup>16</sup> Shani 2014c, 45

as the fallible results of the institutionalized sciences and basic principles of universalistic egalitarianism in law and morality” whereas “secular reason may not set itself up as the judge concerning truths of faith, even though in the end it can accept as reasonable only what it can translate into its own, in principle universally accessible, discourses.”<sup>17</sup> Thus, for Habermas, the *post-secular* realm is normatively instructive for the democratic constitutional state to “deal carefully with all the cultural sources that nourish its citizens’ consciousness of norms and their solidarity.” He seems to imply that secular reason has been insufficient in justifying the liberal constitutional state and needs the infusion of “religiously justified stances” into the public sphere to strengthen its case. But here too, he emphasizes the *translation* of religious claims into “secular” language. This emphasis on “translation” of religious ideas into secular terms raises several concerns and questions, with philosophers such as Derrida even go so far as to argue if the term *religio*-as a lived experience- remains untranslatable in secular terms and attempted translations might only do further injustice to the term. Similarly Dillon argues that the Habermasian concept of the “post-secular” “empties religion of its emancipatory promise” ... and “does great violence to religion as it is understood and practiced by the vast majority of humanity, for whom faith provides “meaning” and “security”.”<sup>18</sup> How then should we conceptualize the post-secular to reflect on and engage with the socio-cultural and religious traditions of the global south that influence their lives?

Having analyzed the problem associated with “translation” of the religious and hence, the post-secular as advocated by Habermas and others, this paper argues for “provincializing”-to quote Shani- the Western concepts of secularism that have dictated the discourses on Religion and Secularism for they exhibit understandings of the “Secular” and the “religious” with a Eurocentric bias and therefore need to be “decolonized” to allow for contributions from other cultures and religion.<sup>19</sup>

In order to achieve that, the “Post-secular” framework suggested by this paper analyses religion as an integral part of cultural identity of people where “Culture” implies a set of attachments that enable individuals to enjoy their lives with dignity by belonging to a certain community, and seeks to empower them by working *within* that culture instead of overriding it with the secular and neo-liberal discourses on Human Security. This distinction is important for this paper since it allows us to analyze religion not just as a problem to be grappled with, but also an *opportunity* to find solutions to the human insecurity issues prevalent in Pakistan. Instead of seeing individuals as

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<sup>17</sup> Ibid., 45-46

<sup>18</sup> Ibid, 48

<sup>19</sup> ibid, 57

“unencumbered”,<sup>20</sup> the Post-secular approach highlights the importance of religious and cultural traditions that bring meaning to people’s lives and are easily intelligible to them. “Decolonizing” the post-secular opens up avenues to acknowledge the “suppressed religious vernaculars” within Western modernity and provides spaces to interact with “alternative cultural programs.” In Islamic discourse, these “suppressed religious vernaculars” refer to the “Open Islam” celebrated for its internal heterogeneity, diversity, and difference that was “ruptured” and “displaced” by the onset of Western colonial subjugation and “globalized modernity” leading to a “Closed Islam” marked by its unified, puritan and inflexible ideology.<sup>21</sup> In this respect, being the state religion of 97% of Pakistanis, it would be unwise, insensitive, and even counter-productive to devalue Islam’s importance while searching for solutions to issues related to Blasphemy, Ahmadi rights, and socio-economic discrimination (explained later) that compound human security woes of religious minorities. Instead, it might be more practical to engage with Islamic teachings that preach tolerance, peace and equality for example, intelligible to the largely Muslim populace, to *delegitimize* the agenda of radical sectarian outfits involved in the persecution of the minorities in the country.

The post-secular framework is also crucial in Islamic parlance wherein the only source of human security of the *Ummah* (the Muslim community) is Allah, God the Almighty, and emancipation can only be achieved by following the Quranic injunctions and Hadith (teachings) of the Prophet Muhammad (PBUH). Therefore, it is the rule of God as opposed to the rule of law (as encapsulated in secular discourses) that ensures the security of the Muslim *Ummah*. While non-Muslims lived relatively amicably in Islamic societies in the past, and were sometimes required to pay a special religious tax called *Jizya*,<sup>22</sup> their security and rights in the modern Islamic State remain ambiguous and therefore, warrant further discussion, something that can be more appropriately accomplished through the post-secular approach. For example, one may ask if the human security of non-Muslim minorities can even be assured within an Islamic polity. If yes, then should it be equal or subservient to that of Muslims? These are some of the key questions confronting the post-secular approach that will be discussed later in the paper.

Finally, apart from direct violence, using the post-secular approach here also helps explain other subtler forms of identity-based insecurity faced by minorities involving social ostracization and structural violence resulting from their systemic “other-ing” during the Islamization process (explained later) in the past 40 years.

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<sup>20</sup> Hopgood, 2014.

<sup>21</sup> Pasha, 2014, 1053.

<sup>22</sup> Shani 2014c, 130.

### 3. The Genesis of Islamism in Pakistan

#### 3.1 From the Margins to the Mainstream

The British left the Sub-continent on August 14-15 1947, dividing the British India into two countries, Pakistan and India. While the Muslim league, under the leadership of Muhammad Ali Jinnah, had managed to achieve a “promised land” for Muslims, there were no clear constitutional arrangements put in place to determine the future orientation of this new state. Jinnah, however, did hint towards the secular nature of the state in his famous August 11, 1947 address to the first constituent assembly of Pakistan where he remarked:

You are free; you are free to go to your temples, you are free to go to your mosques or to any other places of worship in this State of Pakistan. You may belong to any religion or caste or creed—that has nothing to do with the business of the State<sup>23</sup>

But his efforts suffered a serious setback, as he died a year later. With his demise, the religious lobby became the self-appointed guardians of Pakistan, demanding the government to implement the rule of God (Sharia) through the new constitution.<sup>24</sup> By and large though, the secular governments that followed Jinnah, kept religion at bay from politics for the proceeding two decades.

However, it was the “fall of Dhaka” and consequent break-up of East Pakistan in 1971 that Islam occupied central stage in politics. Vali Nasr, in his biography of Abu Ala Maududi, the founder of the Jammāt-I-Islami (JI), mentions how un-Islamic and lax moral values of the military generals, especially the drinking habits of the then President Yahya Khan, were often cited as main reasons behind the debacle of East-Pakistan.<sup>25</sup> The Islamists were thus beginning to mount pressure on the government and in 1974, the JI led widespread riots in different parts of Punjab to declare Ahmadis (then a Muslim minority group) as non-Muslims based on their heretical beliefs, forcing the populist government of Prime Minister Zulfikar Ali Bhutto to cave in to their demands. As the pressure on Bhutto’s government mounted from the Islamist opposition, he went on to offer more concessions to the Islamist lobby by outlawing the sale of alcohol, and banning gambling, nightclubs, casinos, and other activities that were proscribed by Islam.<sup>26</sup>

That these appeasements would secure his political future seemed a wrong calculation, as

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<sup>23</sup> Khan, 2003.

<sup>24</sup> Shafique, 2015.

<sup>25</sup> Nasr, 1994.

<sup>26</sup> Ibid.

Bhutto was toppled through a military coup staged by General Zia-ul-Haq in 1977. Devoid of popular legitimacy, General Zia sought to legitimize his rule by bringing Islam from the margins into the mainstream of Pakistani Society. A keen follower of Maududi himself, he found a fitting ally in JI to carry out the whole-scale Islamization of the country.<sup>27</sup> Aiding his cause was the Afghan invasion by the Soviet Union in 1979 that brought the Cold War to South Asia. The following years saw a pouring of economic and military assistance by the US and Saudi Arabia to help Pakistan train the *Mujahedeen* (holy warriors) to wage *Jihad* (holy war) against the godless Communists.<sup>28</sup> Consequently, the period saw a dramatic increase in the number of Madrasahs (religious seminaries) that preached *Jihad* against infidels in Afghanistan. According to Ayesha Siddiqa, a prominent analyst for military affairs, a number of sectarian militant outfits emerged during the period, with Harkat ul Jihad ul Islami, (HuJI) and Sipah i Sahaba Pakistan (SSP), which later split into the Lashkar e Jhangvi (LeJ) in 1990's, being the most notable among them.<sup>29</sup> While principally created to fight in Afghanistan and later in Kashmir, these organizations launched violent attacks against Shia and Ahmadiya communities among others within the country, leading to the sectarian conflict in the 1980s and 1990s.<sup>30</sup> The US-led invasion of Afghanistan in 2001 and their subsequent crackdown on Taliban and its allies allowed these militant organizations to recoup and rejuvenate initially in the Federally Administered Areas of Pakistan (FATA) bordering the Khyber-Pakhtunkhwa (KP) province before settling in Punjab, Pakistan's largest and most influential province following military operations in KP. The infusion of Islam into politics (i.e. Islamism) in Pakistan is thus an explicitly modern political project engineered by international and domestic political circumstances that would not have been probable in any other historical period<sup>31</sup>.

Siddiqa argues that, as a result of this "religious overdose" caused by the Islamization attempts, "...there are now about six to seven big outfits that are mainly headquartered in Punjab and broadly represent four schools of thought in Islam: Wahhabi, Deobandi, Barelvi, and Fiqh Jafriya (Shi'ite)."<sup>32</sup>

As a consequence of these developments, majority of Punjabis have now become "latent-radical" in their Islamic beliefs, defined as a state where "a certain belief system is consciously and deliberately generated which puts people in peculiar and separate boxes in terms of their identity." This process creates a concept of the *other* as people become exclusive in their

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<sup>27</sup> Ibid.

<sup>28</sup> Siddiqa 2013a, 6.

<sup>29</sup> Siddiqa 2013b, 5-6.

<sup>30</sup> Ibid.

<sup>31</sup> Colonialism, Secularism, and Islamism in North India, Iqtidar, 2008, 237-38.

<sup>32</sup> Ibid.

beliefs and justify discrimination against the other on the basis of their beliefs.<sup>33</sup> Moreover, Siddiqa makes a damning observation that these groups are now expanding their network southwards into the provinces of Sind and Baluchistan.<sup>34</sup> This latent-radicalism in Punjab in particular, and Pakistan in general, explains in part the relative apathy amongst people towards the religious minorities when their worship places are attacked and members killed. While some civil society groups protest against these injustices, the majority remains rather silent, which, arguably, emboldens the resolve of extremist forces to perpetuate these attacks. Thus, going back to the critical framework introduced earlier, we find that the very *identity* of religious minorities in Pakistan has become a source of their insecurity stemming from the systemic “other-ing” initiated 40 years ago.

As Siddiqa observes, due to the increased radicalization of society, and the tacit support of the armed forces, the militant outfits such as LeJ, TTP, JuD, SSP, and their offshoots launch attacks and carry out identity-based extra-judicial killings of the members of religious minorities with impunity.<sup>35</sup> For example, in 2012 and 2013 alone, more than 565 Shias (who comprise 20% of the Muslim population) were killed in different attacks conducted by LeJ. The situation is equally dire for Ahmadis, Christians, and Hindus who encounter identity-based discrimination and persecutions regularly. In September 2013, a massive and unwarranted attack on the Church in Peshawar resulted in the loss of 80 lives injuring more than 100 people.<sup>36</sup> Similarly, in 2010, attacks on two Ahmadi mosques in Lahore killed 93 people, injuring more than a hundred.<sup>37</sup> Here is one of the statements of the LeJ issued after an attack on the Shia community:

It is our religious duty to kill all Shias, and to cleanse Pakistan of this impure nation... It is our mission in Pakistan that every city, village and other place, every corner be cleansed of the Shia and the Shia Hazara. And, as before, in all of Pakistan, especially Quetta, we will continue our successful *jihad* against the Shia Hazara and Pakistan will become a graveyard for them.<sup>38</sup>

Despite such boastful confessions, the LeJ Chief Malik Ishaq and his affiliates did not face any legal retribution until he was killed under mysterious circumstances in July 2015.<sup>39</sup>

The preceding description of the top-down Islamization project has gained pace with an infused bottom-up sectarianism propounded by a proliferation of madrasahs of different sects first during the

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<sup>33</sup> Siddiqa 2013c, 2-13.

<sup>34</sup> Siddiqa 2013d, 4-5.

<sup>35</sup> Ibid.

<sup>36</sup> HRCF, 2013.

<sup>37</sup> Kaleem, 2014.

<sup>38</sup> Hashim, 2013.

<sup>39</sup> The Nation, 2014.

“Afghan Jihad” of 1980s and more recently after 9/11. In Sindh alone, Pakistan’s second largest province, the number of madrasahs jumped from 4354 before 9/11 to 12,545 presently with 2161 of them been designated as “Sectarian” and “dangerous”<sup>40</sup>. This sectarianism continues to *redefine* and rigidify the identity of what it means to be a Muslim according to one particular sect and leads to the exclusion of the “other” sects who do not subscribe to their sectarian ideology. It helps explain the widening net of religious “minorities” in the state where sizable sects such as the Shia which constitute about 20% of the Muslim population of Pakistan and were formerly established as the second largest Muslim sect about three decades ago are now facing this exclusion as a “minority” like the Ahmadis before them. Moreover, the vitriol and inherent discrimination embedded in the “us” versus “them” radicalization of the Pakistani society combined with Pakistan’s tenuous relations with India and the rampant anti-Americanism after 9/11 has only worsened the already perilous conditions of non-Muslim minorities such as Hindus and Christians as well who are perceived as being agents of India<sup>41</sup> and the “vile” West<sup>42</sup> respectively. The recent attack on a Christian school run by *Pakistani* Christians by an angry mob in Khyber-Pakhtoonkhwa in retaliation of Charlie Hebdo cartoons published in France in January, 2015<sup>43</sup> is just one example of this pent-up distrust and hate ingrained towards non-Muslim minorities.

Meanwhile, whereas the recent military operation launched by the Pakistan army in 2014 to “root-out” Islamist militancy has put a temporary lid on incidences of terrorism and violence directed against the minorities,<sup>44</sup> prospects of their long-term security may hinge on the monumental task of reversing the radicalization process infesting the society with militant sectarianism since the 1970s.

### **3.2 Constitutional and legal discrimination and the human insecurity of religious minorities**

Apart from the other-ing of religious minorities, the enforced Islamization project has also inspired certain constitutional provisions that have *legitimized* active discrimination of religious minorities by the state itself. The Ahmadis, a majority of whom were invited by Jinnah to settle in Pakistan after its independence from British India for example, were outcasted as non-Muslims in 1974. This constitutional amendment opened floodgates for further discrimination against the Ahmadis as General Zia went one-step further and promulgated Ordinance XX in 1984 prohibiting

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<sup>40</sup> Chishti, 2013.

<sup>41</sup> Center for International Development and Conflict Management, University of Maryland, 2006.

<sup>42</sup> CBN.com, 2015.

<sup>43</sup> Ibid.

<sup>44</sup> Khattak, 2015

the Ahmadis from “posing as Muslims” to avoid “hurting the sensibilities of Muslims” since their beliefs were now considered as heretical to the mainstream interpretation of Islam. This meant that they could no longer call their worship place a Mosque, or the prayer call as “Azaan” (Muslim call to prayer). The ordinance is intended to prevent Ahmadis from “freely practicing their religion” as any violation could result in fines and jail for up to three years.<sup>45</sup> This ordinance not only violates article 18 of Universal Declaration of Human Rights, which permits everyone to freely practice and profess their religion<sup>46</sup> but also goes against article 20 of Pakistan’s Constitution, which allows minorities to freely practice their religion.<sup>47</sup>

Furthermore, the Ahmadis are regularly imprisoned by the police for the “crime” of disseminating their religious literature while the Muslim clerics are allowed to propagate their hate speeches against Ahmadis without hindrance, which lead to the destruction of their holy sites and violence against them.<sup>48</sup> For example, between 1984 and 2012, 37 Ahmadi mosques were damaged, 28 others were sealed and 16 were forcibly occupied in different incidents.<sup>49</sup> Here is an excerpt from an interview from Mufti Abdul Raheem Sikandri, the leading religious scholar of Jamia Mosque and madrasah Sibghat-ul-Huda in Nawab Shah city of Sindh from author’s fieldwork in Pakistan in the summer of 2015 that aptly summarizes the dilemma of the Ahmadis:

*Interviewer (the author):* What are your views about Ahmadis?

*Mufti Abdul Raheem Sikandri:*

In order to be a Muslim, you have to fully accept the First Kalimah: Lailah illAllah Muhammad Ur Rasoolalahu (translation: There is no god except Allah and Muhammad peace be upon him is his last prophet). Since the Ahmadis believe that Mirza Ghulam Ahmed (Ahmadis’ religious leader) is a prophet, that disqualifies their claim to be a Muslim and hence they are no longer Muslims but Murtids (people who renounce Islam).

*Interviewer:* So what then should be their fate?

*Mufti Abdul Raheem Sikandri:*

Sharia has two ways of resolving this issue. First, you have to “convince” them through “dialogue” and arguments to come back into the fold of Islam and abandon this Fitna (i.e. their belief) and give them three days to revert. If they do not, however, revert to Islam and hold fast to their beliefs then Sharia stipulates death penalty for them. In this case, the Ahmadis are lucky to be alive in Pakistan, as the state has offered them a concession by allowing them to live as non-Muslims.

*Interviewer:* And who is responsible for carrying out the death penalty?

*Mufti Abdul Raheem Sikandri:*

The State.

*Interviewer:* If the state does not punish them with death penalty, then can individuals do it

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<sup>45</sup> Walbridge, 2003.

<sup>46</sup> Universal Declaration of Human Rights, Article 18, 1948.

<sup>47</sup> Religion in the Pakistan Constitution.

<sup>48</sup> HRC, 2012.

<sup>49</sup> Bureau of democracy, Human rights, and Labour, 2012.

themselves?

*Mufti Abdul Raheem Sikandri:*

No. It must be carried out by the state. If non-state actors start killing other people, it will only create Fitna (division) in the Muslim Ummah and that is forbidden.”<sup>50</sup>

However discriminatory his views may be, the very act of branding Ahmadis as non-Muslims ironically at least allows them to *live* as legal citizens of Pakistan despite clear constitutional limitations such as Ordinance XX. This “concession,” however, does not save them from periodic vigilante attacks and harassment by extremist organizations and individuals.

By far the most controversial provision for the persecution of minorities has been the law against Blasphemy. Enacted by the British over a hundred years ago to forbid anyone from defiling any particular religion, the law was *Islamized* in 1986 by the Zia regime, and later in 1992 by then Prime Minister Nawaz Sharif with the active support of religious lobbies, to raise the sentence for defiling Islam and/or disrespecting the Prophet Muhammad (PBUH) from a fine and a few years in jail to life-imprisonment or death.

Under this act, more than 1,170 cases were registered between 1987 and 2012, with a majority of the accused being the members of religious minorities. The high number of convictions has coincided with a significant rise in vigilante attacks where people take it upon themselves to exact “exemplary punishment” on alleged blasphemers. The most high-profile incident happened in 2011 when Salman Taseer, the Governor of Punjab, Pakistan’s largest and most powerful province in terms of its economy and politics, was shot 27 times by one of his gunmen, as he was campaigning for a reform in the Blasphemy law to prevent its abuse against religious minorities. While his murderer has been convicted, the judge who gave the verdict had to flee the country amid threats of reprisal by extremist organizations. Meanwhile, a mosque has been erected in the name of the gunmen right outside Pakistan’s capital, Islamabad.<sup>51</sup> Since then, vigilante attacks against people accused of blasphemy have multiplied and their perpetrators have rarely been brought to justice. For example, in July 2011, thousands of people stormed into a police station and dragged out a man accused of blasphemy only to light him on fire, as the police remained mere spectators. In a similar incidence in April 2014, a teenager dressed in a police uniform entered the police station and shot a 65-year-old Ahmadi man accused of blasphemy in his cell.<sup>52</sup> All of these incidents portray the grim reality of human insecurity that characterizes the lives of religious minorities in an adversarial constitutional, legal, and political structure where the state has failed in its “responsibility to protect” its citizens.

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<sup>50</sup> Interview with Mufti Abdul Raheem Sikandri in Nawab Shah district of Sindh, Pakistan on August 11, 2015.

<sup>51</sup> Boone, 2014.

<sup>52</sup> Reuters, 2014.

Speaking from a critical perspective of human security, moreover, this insecurity institutionalized by the Islamization of state laws with an overt support or implicit complicity of a radicalized society encompasses every aspect of citizens' lives. It ranges from socio-economic discrimination amplified by limited educational and job opportunities to discriminatory laws that restrict their fundamental freedom to profess and practice their religion freely. For example, the Convention for Elimination of all forms of Discrimination Against Women (CEDAW), to which Pakistan is a signatory, records that about 9 out of 10 (90 per cent) Scheduled caste Hindu women are illiterate, while for males of their community, the figure is 63.5 per cent. As of 2001, the average literacy rate of Christians in Punjab was just 34 per cent as opposed to the national average of 46 per cent.<sup>53</sup> Moreover, most Christian and Hindu women work on less than \$12 a month in urban centers, while non-Muslim men from lower-income households work as scavengers and in sanitation industries on virtually unlivable wages.<sup>54</sup> In terms of political representation, only 10 out of 342 seats are reserved for religious minorities in the National Assembly and just 3 out of 104 seats in the Senate.<sup>55</sup> Since most of those members are not elected but nominated by their respective parties, at times, they toe to their party lines even when certain discriminatory policies are implemented against their own communities. With severely limited representation, therefore, the religious minorities have little recourse to socio-economic and political justice.

#### **4. Islam and the Post-secular human security- the debate on religious minorities**

The preceding analysis of the *institutionalized* discrimination against religious minorities necessitates the human security discourse to move beyond its conventional approaches towards a post-secular framework to address this issue. As mentioned before, post-secular framework will provide us with the tools to work within a religious tradition - in this case, Islam - to come up with a problem-solving mechanism. For example, it will allow us to investigate the existing laws pertaining to minorities and encourage discussion on their shortcomings through *Ijtihad*: an independent judicial reasoning about the issues not clearly delineated in the Islamic jurisprudence. Doing so will not only couch it in terms intelligible to the 97% Muslims of the country but may also make it more acceptable to them, given its *Islamic* character instead of it being a secular, and therefore, Western construct. While a comprehensive discussion of minority rights and their human security in an

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<sup>53</sup> Younis et al, 2012.

<sup>54</sup> Buckwalter-Poza, 2011.

<sup>55</sup> Hussain, 2013.

Islamic state is beyond the scope of this short paper, a brief retreat into the reign of the Prophet Muhammad in Medina, whose authority is unquestionably accepted by all sects of Islam, will help reveal the efficacy of the post secular approach. This brings us back to the questions raised earlier: *Can the human security of non-Muslims be secured in an Islamic state? If yes, then should it be equal or subservient to that of Muslims?*

To answer these questions, we need only to take a glance at arguably the first “Islamic State” established by Prophet Muhammad (PBUH) himself in Medina on the eve of his Migration (*Hijrah*) while fleeing persecution from Meccans in 622 CE. Tariq Ramadan, one of the foremost Islamic theorists today, notes that despite being the leader of the new community in Medina, the Prophet (PBUH) immediately drafted a covenant with the Jews and Muslim natives of Media granting them equal respect, privileges, and rights as those accorded to fellow Muslims of Mecca, something that would later be betrayed by most Muslim Caliphs and monarchs who would even relegate non-Arab Muslims to the status of *Mawala* - a derogatory term in Arabic that signifies superiority of Arabs over non-Arab Muslims. With reference to Jews, the ancient inhabitants of the Oasis, the Covenant acknowledges: “They have the same rights and the same duties” thus integrating them into the local community of the believers, the *Ummah*.<sup>56</sup> Similarly, when the Muslims were being persecuted in Mecca during the early years of Islam, the Prophet had advised them to seek refuge in the neighbouring kingdom of Abyssinia ruled by a Christian King named Negus - known for his justice. Moreover, throughout his life, the Prophet maintained strong ties with non-Muslims based on mutual respect and equality. Two of his closest aides and uncles, Abu Talib (father of the fourth Caliph of Islam and Prophet’s son-in law, Ali), and Abbas Ibn Abi Muttalib (whose progeny would later found the Abbasid dynasty) were non-Muslims. On the whole, the Prophet instructed Muslims to respect all agreements and apply the same values of justice while dealing with non-Muslims as they employed among themselves. Later, Quran also mentions this in the following verse:

God does not forbid you, with regard to those who do not fight you for [your] faith, nor drive you out of your homes, from dealing kindly [showing affection] and justly with them: for God loves those who are just. God only forbids you, with regard to those who fight you for [your] faith, and drive out of your homes, and support others in driving you out, from turning to them [for friendship and protection]. It is those who turn to them (in these circumstances) who do wrong.<sup>57</sup> (Quran, 60:8-9)

Eighty years later, the Muslims would largely honour the same code with Jews and Christians when they would conquer Spain in 711 charting a new “era of enlightenment, culture, architecture,

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<sup>56</sup> Ramadan 2007a, 89.

<sup>57</sup> Ramadan 2007b, 77.

and learning” in a Muslim Spain.<sup>58</sup> The same principle was later adapted for the Hindus and Buddhist populations of Sindh conquered in 711 by the Arabs when there were even decreed with the same status of the “People of the book” (used to refer to the three Abrahamic religions: Judaism, Christianity, and Islam) and were allowed to profess their religion freely under the status of the “Zimmis” (the protected ones) as long as they paid their taxes<sup>59</sup>.

Later on, when Islam made inroads into the heartland of India and Muslims ruled over vast populations of non-Muslims, even the Jizya (a poll tax levied on non-Muslims) was abolished in seeking greater integration of Muslim and non-Muslim subjects until it was briefly reinstated during the reign of Emperor Aurangzeb.<sup>60</sup> Even as late as the 19<sup>th</sup> century, the Ottoman caliphs were busy instituting the so called “Tanzimat” reforms between 1839-76 that, among other things, accorded equal citizenship and rights to all the subjects of the empire regardless of race, religion or ethnicity.<sup>61</sup>

These are but a few examples of the remarkable diversity and pluralism manifest in the “Open Islam” (discussed earlier) characterized by its fluidity, and ability to assimilate itself in the local culture to weave pluralist, inclusive and hence, durable polities. At its very basic level, therefore, the post-secular approach is an attempt to tap into this rich resource of Islamic history and theology to challenge the intolerant and extremist versions of the modern day Islamists in Pakistan and the wider Muslim world regarding the rights and privileges of the religious minorities in Islamic polities such as Pakistan in terms acceptable to their Muslim inhabitants. More importantly though, it opens up the gates of *Ijtihad* long shut by Muslim theologians but exhorted by the Prophet Muhammad (PBUH) to resolve all outstanding issues that are not dealt with in Quran or the Sunnah.<sup>62</sup> Thus, the post-secular approach not only provides a framework to achieve human security and integration of non-Muslim minorities in Islamic states such as Pakistan but also seeks to engage with broader doctrinal issues facing Muslims today.

## 5. Conclusion

The case study of religious minorities in Pakistan provides valuable insights into the human security discourse. The critical perspectives shed light on the “Othering” of religious minorities and

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<sup>58</sup> Cordoba- Islam's European Venture, Fateh, 2008, 177.

<sup>59</sup> Pritchett.

<sup>60</sup> Lal, 2001.

<sup>61</sup> Encyclopedia Britannica, 2015.

<sup>62</sup> Ramadan 2007c, 199.

their subsequent legal and constitutional discrimination after the constitution was Islamized during 1970s and 1980s. The trail of political Islam in Pakistan provides a contextual framework to analyze the political developments that led to the rise of political Islam in Pakistan. Secondly, it helps explain why one particular (constitutional) form of Islamism flourished in Pakistan against its more militant forms in other Middle-Eastern Muslim countries. Moreover, this framework enables us to situate the multilayered identity-based insecurity faced by religious minorities in the past three decades in Pakistan within the spectrum of the rise of Islamization in Pakistan allowing us to investigate the causes of this insecurity and to engage with them. Finally, using the post-secular approach, the paper makes a case of protecting human security of religious minorities in Pakistan using precedents from Islamic history and theology and as such, paves way for further research on the issue.

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### ***Human Security Challenges***

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By Alan Hunter

By Parviz Ahmad VALIZADAH <sup>1</sup>

The globalization and conflict of interests at the national or international level in the post-Cold War era has opened up a space for new fields of study on peace and security issues, in particular human security. The efforts made by international communities to promote peace and security often face challenges that require a comprehensive analysis of the difficult environment, from different perspectives. *Human Security Challenges* by Alan Hunter provides an insightful contribution to these efforts. Having grown up in a conflict-ridden country, Afghanistan, and having become interested in understanding the dynamics of human security and its challenges, I found the content of this book very useful for those involved in the academic field, policy-makers, humanitarian workers and even those directly involved at the local government level.

This book is divided into eleven chapters plus introduction, conclusion and reference sections that are grouped into the following four themes: 1) global challenges, 2) development, aid and interventions, 3) technology, business and diversity, and 4) concepts, critiques of human security.

Although in a relatively small volume, the author discusses each topic from different perspectives and provides the reader with a clear image on the challenges of human security issues that are often missing in related publications. The book is written in a very readable style that easily enables the reader to follow.

The author starts the introduction section with a brief review on the definition of human security and the importance of the coexistence of humans and their welfare conditions that have been emphasized by religious leaders and philosophers since the ancient times, and more recently, by the practitioners and experts in human security as defined as freedom from want, freedom from fear and freedom to live in dignity.

**Global Challenges:** In the first part the author indicates the increasing gap between population growth and the Earth's resources such as food, water and energy, as the source of challenges to the human security agenda. He explains different opinions from Thomas Malthus and Thomas

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Homer-Dixon to Beddington in order to analyze the challenges faced by the human population and the extent to which some of these challenges can be made manageable. He argues that most of the challenges occur due to the limitation of the Earth's resources, which humans have imposed on the planet. Therefore, the author divides all possible threats to human security into two categories: direct and indirect threats. The first category causes immediate threats to life but the second category may not have an immediate impact.

The author identifies extreme poverty as the key factor in many of the human security threats, and he believes that extreme poverty often has less to do with a lack of resources than with the inequality and distribution of income within an individual country. Threats to human security are thus more complex than mere extreme poverty, leading to serious collective violence as exemplified in Rwanda (1994) and Darfur (2003).

Violence does occur even in peaceful societies although it is often underestimated or not discussed in the media. The author rightly notes that there is no standard method for prioritizing and weighting what the major threats in a society are. In light of this, he notes the glaring gap between the reality and the efforts and assistance provided in the name of human security. This gap is particularly prominent mainly in low-income societies where they cannot afford investment to combat human security threats in fields such as the prevention of deadly diseases.

In the last section of this part, the author introduces a set of indices that are often used to measure the degree of human security such as GDP, HDI and HSI (Human Security Index) and discusses their applicability and the limitation of each. To reduce the risk of exposure to serious threats at the personal level at least, the author suggests, it is important to provide sufficient resources, methods and suggestions for the benefit of those who work in difficult environments.

**Development, Aid, Interventions:** In the second part, the author classifies the countries based on the level of development and industrialization: from rich to poor. Quoting from well-established scholars on humanitarian assistance, the author argues that in micro-level programs such as health and education projects this assistance often succeeds in achieving its goals, while in macro-level programs, the assistance often fails to meet its objectives. As a result, he admits that in the 21<sup>st</sup> century, poor countries may face even more challenges to meet their basic needs.

In the last section of this part, by referring to the genocides in Rwanda (1994) and Bosnia (1995), the author explains the complexity involved in the protection and empowerment of civilians. The author suggests that beside R2P (Responsibility to Protect) doctrine, the international community should implement more appropriate diplomatic, humanitarian, and peaceful means in settling violence, and closely cooperate with civil society movements in order to reduce the risk of

human disasters such as those witnessed in Iraq and Afghanistan. In addition, the author provides examples in which the peace-building efforts have either faced serious challenges or resulted in a misallocation of humanitarian assistance due to corruption, selective bias and ignorance of local needs.

**Technology, Business, Diversity:** In this part, the author integrates a new topic into human security discourse by referring to the two-sided impact of technology on human security. On the one hand, for instance, technology can help increase agricultural productivity, as well as improving the ways to meet education and communication needs. On the other hand, the use of technology in destructive weapons and cyber-attacks has inevitably an adverse impact on production and employment.

The author believes that, besides nation-states, United Nations and other INGOs that aspire to help protect the vulnerable population, the private sector can assume an important role in the human security agenda. However, the private sector may also be a participating collaborator of conflict as shown in Africa and other parts of the world, forging strong ties with powerful political elites and even working directly with the state army as shown in the US intervention in Iraq and Afghanistan.

The author explains how the mainstream human security agenda has been influenced by two major international movements, mainly by the Washington Consensus approach (free-market oriented), then followed by the Beijing Consensus approach (national sovereignty and market-orientation), both being integrated with the interests of the private sector. That leaves one area for private sector's contribution to human security: the development of corporate social responsibility.

Finally, by analyzing the dynamics of individuals and communities, the author observes that the acceleration of immigration and human mobility and the economic and social interactions between migrants and host communities may positively and negatively influence both communities. The integration of the globe, the author speculates, may lead to the emergence of new players in the practice and discourse of the human security agenda, where the West may still retain its supremacy.

**Concepts, Critiques of Human Security:** In the last part, the author explains the two approaches to human security. The R2P, initiated mainly by the Canadian government and implemented through UN resolutions, has developed from its initial form of the 'right to intervene' to the 'right to protect people.' The second approach has been mainly supported by the Japanese government under the UN Charter and emphasizes a people-centered approach, combining protection with empowerment. Recently, under the influence of the latter, the concept of human security has been extended to discuss a wider aspect of human life.

The author concludes this book by recognizing the importance of human security in the international community that should possess the power to address the threats and prevent a catastrophe. In addition, he recommends the Japanese approach of effective prevention and peaceful integration of state power with the empowerment of vulnerable people. This argument of the author does have a logical connection with his analysis of human security challenges expressed throughout this book.

The author mentions that humanitarian assistance may achieve success in the micro-level efforts but fail easily in the macro-level projects due to problems such as corruption that exists within host states and often in donor agencies as well. He encourages the humanitarian workers to utilize the available resources, information and opportunities in the field to learn how to reduce entanglement with problems such as corruptions and survive adverse environments. This message is particularly encouraging to students and young people in both developed and developing countries.

For the future of development and security, the author provides an optimistic trend for the future of human security by referring to the established recognition of important roles played by human security-inspired policies in the security agenda, as well as the increasing efforts of connecting the security agenda with the development agenda in the holistic framework of human security. For the reviewer, this dual nature of human security seems to be particularly important in contributing to the global debate on the post-MDGs agenda.