Ethics in Action

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Asian Human Rights Commission

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Candlelight protest in Seoul, South Korea.
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Democracy in South Korea: Mature society versus immature system

Jose Ney

The people of South Korea reached democratization after a long and painful struggle against authoritarian rule and military dictatorships. The uprising of 10 June 1987 marked a historical moment for the country, after which the June 29 Declaration enabled people to directly vote in presidential elections. Since then, South Korea has become a benchmark for democracy and human rights for other countries in Asia.

Recent years however, have shown there is little room for complacency; the genuine realization of both human rights and democracy need continual work. While South Korean civil society—especially today's youth—have significant expectations of their democratic rulers and institutions, these expectations are far from being met. In particular, the lack of public discourse and effective channels of communication are stunting democratic development. Moreover, the government is increasingly using the safeguards of democracy—the legal system and its institutions—to further its own goals.

This was most clearly seen beginning with the recent protests against beef imports from the United States and the subsequent government crackdown.

Public health concerns

In 2006, certain sanitation conditions regarding South Korean beef imports from the United States were agreed upon by the two countries, after the discovery of persons affected with mad cow disease (Bovine Spongiform Encephalopathy; BSE) in the United States. These conditions stipulated that South Korea would import only boneless beef from cows under 30-months of age, and that if any violation was found during inspections the imports would stop. Due to such violations in the same year, beef imports had been at a standstill from 2006-2008.

Prior to newly elected South Korean president Lee Myeong-bak's visit to the United States in April 2008, delegations from the two countries dramatically agreed to restart beef imports on April 18. Contrary to the 2006 agreement, South Korea would now import beef containing bones as well as Specified Risky Materials (which include brain, internal organs and spinal cord) from cows of under 30-months. Moreover, the South Korean government would no longer be able to halt or suspend beef imports if any

violations of sanitation conditions are found. Needless to say, this was of severe concern to South Korean citizens.

Enormous public resistance by the people to this agreement impeded the Minister for Food, Agriculture, Forestry and Fisheries' attempt to verify the agreement in the government gazette—as legally required for the enactment of all agreements and procedures—by the end of May. In fact, the pressure from one million South Koreans participating in candlelight vigils and rallies led to the dispatch of a representative to the United States to renegotiate the agreement. The result was the Quality System Assessment (QSA) scheme guaranteeing the beef to be from cows of under 30-months.

The South Korean government was patting itself on the back for a job well done in securing the QSA, oblivious to the fact that at present, the United Sates inspects only 0.1 percent of cows for BSE, while on its side, South Korea inspects a mere 2-3 percent of beef imports. In comparison, Japan has an Export Verification Programme that not only inspects all the beef imported from the United States, but also requires all relevant documents including the date of birth of cows to be included with the beef imports.

Without holding any public hearing or consultation, and without publicizing all the details of the agreement, the Minister for Food ordered the agreement to be put in the government gazette on June 25. It is astonishing—and hardly bodes well for the future democracy of South Korea—that an agreement posing potential danger to public health can be put into effect not through rigorous debate in the National Assembly, but by a ministerial order.

It is no surprise that South Koreans are now deeply frustrated from the lack of communication with their president and his government, and his one-way style of policymaking. During the three months of protest, Lee Myeong-bak was twice forced to offer public apologies, 'regretting his insufficient response to the people's demands'. Despite such 'regret', the government's logic is that it must abide by the agreement in

order to make its bilateral Free Trade Agreement with the US effective, notwithstanding concerns of faulty translation or misunderstanding of facts. All it has left to say is: 'Believe USA. US beef is safe.'

More than 100 days of protest

After the initial agreement in April, one of the first reactions was the airing of an episode entitled 'Is U.S. Beef safe?' by the popular television programme 'PD Notebook'. In response, several middle school students who feared the beef in their school meals could contain mad cow disease held a candlelight vigil on May 2. Meanwhile, the 'People's Conference against Mad Cow Disease' was formed, consisting of about 1700 civic groups from around the country. Since May 6, this coalition group has facilitated forums where people could voice their concerns on the agreement and disease. Beginning May 26, hundreds of thousands of South Koreans began taking to the streets, calling on their government to renegotiate the agreement.

Despite the peaceful and non-violent nature of the protests and demonstrations, the police consistently attempted to blockade and harass the protesters. Police vehicles were used to block all roads leading to the demonstration, while trains would not stop at stations near the demonstration. Riot police were even mobilized to block all entrances/exits of the subway and pavements.

Regardless of their frustrations, demonstrators resisted provocations to indulge in violent behavior. If anyone was seen using violence, chants of 'Non-violence! Non-violence!' were immediately heard. Civic groups also played an active role to prevent any possible violence by both demonstrators and the police. Lawyers groups organized themselves to provide demonstrators with on-the-spot legal advice regarding what actions can be taken at times of arrest. Amateur photographers assembled together as the 'Civil Press', taking photos of the marches and any incidents of police violence. Others volunteered to provide medical treatment as and when needed. Small shop owners offered free noodles, coffee and tea to the participants, while farmers offered watermelons and other agricultural products. Human rights activists wore vests indicating 'human rights monitoring group' and distributed flyers showing possible actions to be taken if they were arrested, as well as encouraging demonstrators not to respond when instigated by riot police. Staff from the National Human Rights Commission were also present at the demonstrations to monitor any abuse of human rights. All of these voluntary activities continued daily for over 100 days. During this time, not a single incident of theft or any other crime was reported.

The following describes the various ways in which civil liberties of the demonstrators were curtailed.

Restrictions on freedom of assembly

According to article 21(1) of South Korea's constitution, "All citizens shall enjoy freedom of speech and the press, and freedom of assembly and association." Furthermore, article 21(2) notes that "Licensing or censorship of speech and the press, and licensing of assembly and association shall not be recognized."

In contrast to the freedoms guaranteed by the constitution, the Act on Assembly and Demonstration requires police permission to be obtained before the holding of any assembly or demonstration. Without such permission, individuals exercising their constitutional rights are considered to be participating in illegal acts. Facilitators of the recent candlelight rallies were unable to obtain approval for their assembly; furthermore, the police issued the disapproval notice just a few hours prior to the scheduled assembly, rendering it impossible to appeal the decision.

When demonstrators are expected to express opinions against government policies, protest approval often comes from higher authorities. Generally, those who oppose government policies are not allowed to hold assemblies, while those supporting government policies can even expect police protection during their assemblies.

The Act on Assembly and Demonstration has been arbitrarily interpreted by the Senior Superintendent of police or the Commissioner General. For instance, according to article 10, no one is allowed to hold any assembly or demonstration before sunrise and after dark unless they obtain permission from a nearby police station. The police interpretation of the article is that no assembly and demonstration is to be permitted before sunrise and after dark.

Unnecessary/excessive use of force

The South Korean police have failed to distinguish between assemblies that are 'illegal' and those that are 'violent'. Rather, the two are seen as one concept; an illegal assembly that is violent. This obviously affects the way the police deal with the demonstrators.

During the recent protests, demonstrators would sit in front of the parked police vehicles preventing them from marching. According to the procedure for dispersing illegal assemblies, police must first notify demonstrators that they are holding an illegal assembly three times. If demonstrators do not voluntarily disperse after listening to the notice, the police can forcibly disperse them, in accordance with the regulations for using force.

Furthermore, if any demonstrators are arrested for holding an illegal assembly, they are to be informed of the Miranda Principle, which includes the reason of arrest, place to be taken and their legal rights.

In reality, riot police used their shields and batons not to protect themselves, but to intimidate and assault the demonstrators during dispersal. They also used water cannons and fire extinguishers on the demonstrators. The police blatantly violated their code of conduct and directly targeted demonstrators. As a result, many demonstrators had over half of their ear drums destroyed.

Individuals arrested were never notified of the Miranda Principle, nor were they allowed to speak to the legal counselors present. In fact, legal counselors themselves were also arbitrarily arrested if they protested against police actions. Meanwhile, human rights defenders including activists, journalists and medical volunteers were also indiscriminately assaulted in the process of dispersal and injured by metal bars and fire extinguishers, reported to be thrown by the police. Staff from the National Human Rights Commission were similarly assaulted and injured.

By July 31the police had reportedly arrested 1042 demonstrators on the scene; investigated nine who were subsequently detained, while 946 were investigated without detention; taken 56 persons to court for trial on a minor offence and; released 31with a caution. Additionally, at least 167 people were arrested on the night of August 5, protesting the visit of US president George Bush.

The prosecutor has announced that those arrested for violations of the Act on Assembly and Demonstration and the Road Traffic Act, would be fined between 1,000,000 KRW to 3,000,000 KRW (USD 1000-3000). This is a relatively high figure; considering that there was no great threat to public order, a minimum levy should have been applied. In fact, the high penalty seems to be being used as a tool to suppress people's freedom of assembly, demonstration, opinion and expression.

To worsen matters, earlier this month on August 5, the South Korean police formed a special group of trained officers for the specific purpose of arresting demonstrators who used violence. The police also proposed a plan that money will be paid to officers depending on the number of people they arrest and calculated retroactively into their salary beginning from May 2. According to the plan, officers will be paid 20,000 KRW

(USD 20) for a person arrested and investigated without detention and 50,000 KRW (USD 50) for a person arrested and investigated with detention. This initial plan was modified to a system with a different name but similar contents, accumulating the number of arrests and providing rewards for officers at the year's end.

Freedom of conscience and military service

Another interesting fact to note is that South Korea's riot police are not in fact professional police officers, but young men conscripted as battle and auxiliary police.[1] Since it is the constitutional duty of every man to serve in the army for 24 months, some conscripts are randomly recruited as battle police, while others apply to join the auxiliary police.

Four of nine Constitutional Court members in 1995 opined that dispatching such battle police members to suppress demonstrators breached the duty of national defense according to article 39(1) and (2) of the constitution. Furthermore, these practices of mandatory service have also rendered the South Korean government unable to ratify the International Labor Organization (ILO)'s article 29 on forced labor.

Several studies have found that these young men suffer from sleep deprivation, poor quality rations and long, heavy-duty labor during their service. Their freedom of conscience is also seriously violated, as they are obligated to follow orders to assault unarmed civilian demonstrators with police shields and batons.

Lee Gil-jun was one such conscripted auxiliary police member, who used force against the demonstrators. He later objected to military service and held a sit-in protest for two days at the Myeong-dong Cathedral before returning to his unit. Ignoring his objection, his commander repeatedly ordered him to mobilize. Due to his resistance, Lee has been detained for disobedience. Conscientious objectors in South Korea are usually sentenced to one-and-a-half-years imprisonment.

After seeing his colleagues being sent to police the demonstrations, Lee Gye-deok—serving his national defense duty in the battle police—requested to be transferred to the army. He also expressed his frustration and regret regarding police treatment of the protesters via the internet. While there has been no response to his transfer request, he has been ill-treated by his colleagues and unit commander, and received repeated disciplinary punishments.

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1 The system of battle police has its roots in the Korean War, and the Act on Establishment of Battle Police was introduced in 1970. The Act was amended in 1983 to add a system of Auxiliary Police. Both battle and auxiliary police officers were meant to assist professional police in public security measures, particularly during anti-government demonstrations or labor strikes.

Various United Nations human rights bodies including the Human Rights Committee have recommended that South Korea adopt a system of alternative military service to guarantee the basic rights of its citizens in accordance with international norms and standards. Although a Research Committee on Alternative Service finished its research in 2006, and its plan for alternative service was supposed to start in 2009, just a few months ago, the Ministry of Defense announced that a new research committee will be set up to evaluate the matter.

In the meantime, the lack of recognition of conscientious objection to military service and any alternative military system has led to an estimated 3761 youth being imprisoned between 2002-2006. While they take their imprisonment as a rite of passage, their criminal record causes difficulties in obtaining employment, as well as being a source of social discrimination.

Freedom of opinion and expression

During the three months of protest, spokespersons from the Blue House (presidential office), the ruling Grand National Party and a few newspapers with a high subscription raised allegations that the protests and rallies were being 'masterminded'. The newspapers fabricated stories regarding the motives and activities of the demonstrators. In response, angry demonstrators campaigned not to buy, read or recommend those newspapers to others. Some internet users also uploaded a list of companies advertising with those newspapers, asking for individuals to appeal to the companies to withdraw their advertisements.

For several days afterwards, the newspapers wrote that their advertisers had received threats and urged the government to conduct investigations. The prosecutor's office usually begins any investigation only upon receiving formal complaints from victims, but in this case it began an investigation without any complaint from the involved companies. Upon being criticized for its actions, the prosecutor's office encouraged several company owners to lodge complaints.

In the meantime, about 20 persons who posted the list of companies on the internet were forbidden to leave the country, due to being under investigation. One of these persons only found this out when he went to Incheon airport to attend a meeting and see the Pope in Rome. This case is still being investigated.

Similarly, the prosecutor's office is currently investigating four producers of 'PD Notebook' for civil and criminal defamation, in response to a request by the food and agriculture ministry.

To control material being published on the internet—as well as those publishing it—the president of the Korea Communications Commission has announced its plan to amend the law and increase the number of websites where a person cannot write an article without verification of identification—internet users have to fill out a form with their name and national ID number.[2] So far, 37 internet portals have forcibly adopted this system, with the number to be extended to 268.

In the same authoritarian vein, the Ministry of Justice is to create a new criminal offence called 'insult on cyberspace'. Any writing anywhere on the internet that defames someone's honour or reputation, can result in a criminal penalty for the author. While decriminalization of defamation is the international trend, the South Korean government is moving so far the other way as to create criminal offences in cyberspace. The government alleges that criminalizing defamation is the best way to prevent offences to persons' honour and reputation. And yet, this must be weighed against the easy targeting of those opposing government policies or voicing allegations against politicians and government officials.

Control of media

Together with limiting people's freedoms of expression and opinion, the new government has made several attempts to control the country's media. This has been another issue taken up by civil society in recent times. An individual working at the presidential election camp for instance, has already been nominated as the president of YTN, one of South Korea's cable news channels. The dismissal of the CEO of KBS—one of the most reliable public broadcasters in the country—is another instance of controlling the media.

According to the Broadcast Act (2000), the president can nominate KBS' CEO but there is no provision allowing him to dismiss the individual; rather, the tenure of office has been fixed for three years and cannot be terminated unless he is involved in corruption. Despite this, the Board of Audit and Inspection (BAI) has suddenly begun 'special' investigations into Jeong Yeon-ju, CEO of KBS, on the basis of allegations of mismanagement. Despite internal criticism, a special KBS board meeting was held and six board members proposed the dismissal of Jeong to President Lee. On August 11, the dismissal orders were signed.

A complaint has been lodged by Jeong asking for a court to confirm the invalidity of his dismissal and suspend its execution on August 11. The Broadcast Act only allows

2 In South Korea, the national ID number can be used by public institutions (police, health organizations) to access personal records such as date of birth, current address, completion of military service and criminal records, which are all stored on a central database.

for the BAI to propose an officer's dismissal if he has been involved in serious crimes such as corruption, usurpation or personal misdeeds. It is therefore not clear whether mismanagement can be a reason for dismissal; whether the BAI can propose the dismissal of the CEO; whether the president has the authority to dismiss him. It is now left to the judiciary to interpret the law and clarify the matter.

The next level of democracy

South Korea's democratization in 1987 after a sustained period of military rule brought important changes in the country's laws and institutions. Of particular importance was the amendment of the constitution, allowing for direct presidential elections. Through these various laws and institutions, formal democracy was set up. The recently amended criminal procedure law will further strengthen this formal democratic infrastructure. However, South Korea still has a considerable way to go in strengthening substantial democracy—its system for democratic governance.

South Korea is now facing its second test for democracy: how to strengthen democracy after democratization. How it responds to this challenge will be keenly watched by citizens and governments throughout Asia, who are learning that there is much more to democracy than casting ballots in elections, as they struggle to stabilize and strengthen their own democratic foundations. South Korea's foundations were set some 20 years ago. However, the very institutions and mechanisms set in place to cement democracy are now being used to further the aims of government in a decidedly undemocratic manner.

The government is also increasing restrictions on citizen freedoms, particularly on the freedom of opinion and expression, which are essential to a healthy democracy. The rhetoric of economic development and the geopolitical situation in the Korean Peninsula have long been used to suppress discussion and progress on human rights and democracy. The government's recent amnesty to various high-profile individuals for tax evasion is an example of how its policies and rhetoric consistently ignore marginalized sectors of society however, benefitting only the wealthy and powerful. Furthermore, there is at present no platform where voices speaking in favour of alternative ideologies or political positions can be heard or where genuine public debate can occur.

While South Korea's civil society has shown itself to be particularly mature and responsible in articulating its demands in a lawful manner, there is a gap between civil society and those in government. South Korea is at a state where the institutions of democracy exist, and where ordinary citizens are democracy-savvy. And yet, contray to what they have been taught to expect from democracy, the post-1987 generation experience systemic inconsistencies and injustices.

Indonesia ignoring cholera outbreak

Norman Voss

Shocking health conditions and deaths from cholera are being reported in Indonesia's most resource-rich region. As of last weekend, 173 deaths had been reported among the indigenous people in the eastern province of Papua. The victims suffered severe diarrhea, which have been confirmed to be caused by cholera.

The epidemic is spread through contaminated water or food and can lead to death within a few days. Papua, whose indigenous population experienced serious hardships during the Suharto regime and continues to suffer severe human rights violations, has now been struck by a major health disaster. Yet the Indonesian government is not providing sufficient support.

Local church groups have been recording cholera cases in the Kamuu valley in the district of Dogiyai. They have tried to alert authorities, including the Health Department in the nearby city of Nabire, ever since the first cases were discovered in April this year.

Indigenous Papuans are forced to rely on the support of local non-governmental groups while the health authorities continue to ignore the situation. The Ministry of Health has so far acknowledged only 87 deaths among 575 cases of infection. Organizations in Papua are calling for urgent help.

The epidemic is likely to spread and there is imminent danger of further deaths. Urgent prevention measures are required, which include the provision of means for proper disposal of fecal waste, treatment of sewage, the decontamination of water supplies and public health education.

Indonesia was the starting point for a major cholera pandemic called "El Tor" that began in 1961 and spread over the following decade to other countries including Bangladesh, India, the Soviet Union and Italy.

The ongoing deaths have brought despair and desperation among the affected communities, and frustration over official negligence has already resulted in riots. An outbreak of violence in the town of Moanemani is an indicator of the thin level of trust between the indigenous population and the administration in the provinces.

Distrust and suspicion are largely a result of government policies put in place to exploit the rich natural environment. During the Suharto regime, a transmigration policy brought innumerable migrants from other parts of Indonesia to Papua, whose population is largely Christian. Many of the migrants to arrive were Muslim traders.

Over the years the migrant population has risen to 40 per cent. The resulting inflow of business and different culture are felt as an attack on the indigenous culture and habitat of the local people. Tensions have in the past sparked riots and even independence movements, which faced serious repercussions from the armed forces, including the arrest and torture of many suspects.

Papua has enormous natural resources, but the indigenous people have not benefitted much from them. Timber and minerals are the main export resources, and the activities of logging and mining companies are destroying both the environment and the local way of life. The exploitation of natural resources plays mainly into the hands of the migrant traders, with indigenous people largely ignored.

Indonesian Social Welfare Minister Aburizal Bakrie told a delegation from the World Council of Churches that under democracy, internal migrants cannot be stopped from moving to Papua, where their skills and talents make it easy for them to dominate the more "backward" societies.

It seems however, that under Indonesian democracy the violation of rights by the army, the police and the Ministry of Health also cannot be stopped.

Deputy Foreign Affairs Minister Andri Hadi has admitted that the transmigration policies of the past were a wrong approach and are the cause of many problems the Papuans are facing today.

But what is needed most now, is a serious reaction from the health authorities to control the cholera epidemic and prevent its spread into the neighboring district of Paniai. Medicine, doctors and proper waste disposal teams need to be equipped and sent to the region.

So far, in the most resourceful region that creates major income for the state, not even basic standards of healthcare have been provided to prevent what could become a major epidemic.

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Sacred duty, caste and 'untouchability'

Jin Ju, Researcher, Asian Human Rights Commission

Historically, Korean society has valued the concept of 'chen-jik' (천직, 天職,てんしょく), which is found in other East Asian societies as well. 'Chen' means 'God', while 'jik' is 'occupation'; the occupation given from God. When an individual is endowed with a special talent and puts all her effort and energy in making the most of this talent, this is seen as her chen-jik. Artists, musical prodigies and Olympic athletes are thus all following their chen-jik. Apart from this elevated meaning, chen-jik also has another connotation: a low and humble occupation (written with a different Chinese character, 賤職). The definition of such an occupation has varied with time and culture, manifesting itself more as a mindset than any physical work.

In contrast to this East Asian situation, Hindu society—dominated by the caste system—believes that everyone has chen-jik. Based on the purity of descent, every caste and sub-caste is granted its own occupation, considered a duty given by the Gods. According to modern India's founding father, Mahatma Gandhi,

> Caste has nothing to do with religion. It is a custom whose origin I do not know and do not need to know for the satisfaction of my spiritual hunger...The law of Varna teaches us that each one of us earns our bread by following the ancestral calling. It defines not our rights but our duties. It also follows that there is no calling too low and none too high. All are good, lawful and absolutely equal in status [Quoted in Rajendra Kalidas Wimala Goonesekere, 'Prevention of discrimination and protection of indigenous peoples and minorities', Working paper submitted to the Sub-Commission on the Promotion and Protection of Human Rights, 14 June 2001, p. 5].

A Brahmin priest in the documentary *India untouched* (2007), said every caste has to fulfill its own duty and cannot undertake any other duty, which would be against the laws of God. This division of labor means that he, as a Brahmin, is born to pray, while a Chamar (one of the Dalit communities known as 'untouchable') is born to repair leather shoes. The Chamars are trained to repair shoes since they are children (and are not allowed to do anything else) while Brahmins do not need to do anything other than pray.

And so it seems that everyone living in a Hindu society has their own chen-jik. Individuals belonging to the upper caste are of the belief that their occupation is a sacred duty given by God. This duty has two parts. One part is an individual onus to perform one's designated occupation. The second part is a group responsibility to separate from other castes. This latter part, taken to its extreme, is evident in the practice of 'untouchability'. In this way, the caste system embodies both the sacred and inferior forms of 'chen-jik'.

Valmiki, carrying out the lowest duty on earth

A year after her husband died, Jeena sweeps the street everyday in the Viramgam town of Ahmedabad district, Gujarat. She was offered the job by the Viramgam government as compensation for her husband's death. Her husband Gopal was employed as a casual sanitary worker for the town under the Nirmal Gujarat Program. Gopal's job was to collect garbage from the streets and gutters and dispose of them in a tractor.

Jeena collecting garbage

Gopal usually worked eight hours a day but was sometimes asked to work during the night as well. He was called to do extra work on the night of 2 August 2007, when it had been raining hard during the day. Cleaning gutters in such weather was hazardous work. Gopal could not refuse to work however, since he belonged to the Valmiki community, whose designated occupation is to manually clean dirt, including human excreta. His refusal could lead to beatings and abuse by upper caste officials. In fact, workers protesting against the night shift after a sanitary worker was injured the night before, were threatened with dismissal.

Gopal began feeling ill on his way home from work on August 3. He was rushed to the hospital by his family, but died on the way. The doctor who conducted the autopsy said the reason of death was unknown; Jeena was aware that no doctor would say anything in favor of a Valmiki.

Although Jeena received some monetary compensation from the local government and the ruling political party, she has to make her living as a manual scavenger in place of her husband, having three school-going children to take care of. Does the Viramgam municipality know that prior to Jeena's husband, two other manual scavengers had also died in this area? Is the municipality aware that manual scavenging is prohibited under the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act (1993)? Or is it that the laws of India need not apply to the lowest denominators of the caste system, but simply exist in thick law books?

Despite the horrors of her work, Jeena feels relatively lucky as she does not work the night shift like her husband. On the other hand, she faces 'untouchability' and discrimination against women:

> I have to bring my own cleaning instruments like dustpan or broom, as I am not provided with anything for cleaning the street and gutter. I work for eight hours a day and have only two days off per month. My husband was paid 100 rupees on a daily basis but I am paid 2500 rupees monthly, which is less than a male worker's wage. And yet, there are more female scavengers than male scavengers. The supervisor checks attendance every morning. He asked us to pay even for attendance card. He is very rude and tough to women. After checking attendance under the hot sunshine for half an hour, we drink water separately from other community people.

Jeena did not talk much about her life in front of her relatives at home, but when she was on her own she said, "I wish I could have my own house only living with my children." She looked exhausted by the past and fearful of her future, now that she is one of Gujarat's 64,000 manual scavengers.

In another district of Gujarat, Jush has also lost her husband. She was also offered a job as a sanitary worker in place of her husband by the Vadodara Municipal Corporation.

Jush, her family and their home

On 26 May 2008, Jush's husband Harish and another worker Nagin died while working inside a manhole at night. The working conditions of manual scavengers are mostly the same

everywhere in India. Harish and Nagin were asked to block the main sewer pipe in a manhole to assist in a valve repair at night, which was extra work after their regular hours. Both of them were about 30 feet inside the manhole without wearing any protective equipment or even clothes.

No worker wears protective gear while doing manual scavenging in India, simply because they are not provided with any by their employers—government institutions. Are all district governments too poor to provide proper equipment to their workers? Recalling the documentary *Lesser Humans* (1998), I imagine Harish and Nagin working in the manhole, soaked from head to toe. In ten years, there has been no improvement in the working conditions of this community, and they continue to have no other choice of livelihood.

No mother wants her son to die in the same manner as his father. Jush forcefully said, "I will not allow my son to work the same as his father, never."

"The mayor of Vadodara promised me to provide different job for my son other than sanitary work," she added.

The mayor visited Jush immediately after her husband's death and gave her three lakhs (USD 7000) as compensation. The mayor himself belongs to the Valmiki community, and expressed his concern about the two sanitary workers' deaths, noting that this was the first incident since he took office. However, it is the 11th death of a sanitary worker within the Vadodara district in recent times. After all these deaths, workers are still manually working inside manholes, which violates the Gujarat high court order of 2006 prohibiting manual work in manholes.

There are 600 Valmiki families in the slum where Jush lives in Vadodara city, 400 of whom are engaged in manual scavenging. When the father/husband dies, the district government gives his job to his son or wife. If Jush had not refused the offer of sanitary work for her son in place of her deceased husband, her son would do the same work and might also be found dead in a manhole like his father.

Valmiki slum where Jush lives

Previously, the Valmikis were derogatorily called 'Banghis'. Discrimination and exclusion in a society have three dimensions—institutional, customary (attitudinal) and cognizant. The last dimension lasts much longer than the first two dimensions. Changing the community's name from Banghi to Valmiki does not lead to a change in people's cognition. Unless discrimination and exclusion are changed in all three dimensions, the Valmiki is merely the appeased 'Banghi' of 21st century India. Similarly, calling a Dalit 'Harijan' (son of God), does not make people change their perception of Dalits. Who then, is responsible for the reproduction of 'Banghis'?

'Untouchability' and the duty against 'pollution'

"What I say through my tongue is law," said the village head to Natu Dahya, when he attended his first village council meeting after being elected as a village council member in 2007. The Marida village of Kehda district, Gujarat is controlled by a small clique of persons who follow only the laws of their tongues, rather than any laws of justice.

> When the first meeting of village council was held, I tried to sit on a chair. It was just to sit on a chair but I knew that no village council member from Dalit community had ever sat on a chair during a council meeting till then. I thought I should try it. As soon as I sat on a chair, all others were looking at me as if it was unacceptable. After the meeting, the village head came to me and said, "Why are you Banghi sitting on a chair? When you sit on a chair, the chair becomes untouchable… Wash it." I had to wash it with water and sit on the floor.

Natu Dahya

At the second meeting, Natu was ordered not to sit on a chair by two unofficial council members (representing their wives, who were the elected members). Natu was also given snacks separately from other village council members. When Natu tried to propose his views for the village development at the third meeting, he was told by the village head, "You do not have a right to talk about it. I decide what we do."

Natu's fight against 'untouchability' began before being elected to the village council. Previously, he had fought against upper caste persons who had encroached upon village land belonging to Dalits. Since then he has been seen as a leader of the Dalit community.

Apart from Dalits, Natu is also supported by some Thakors who belong to the Other Backward Classes (OBC). These Thakors are excluded from the economically and politically predominant Thakors in the village, living on the fringe of the Thakor community. They often visit Natu to talk about village problems, and even invite him to wedding ceremonies. While amongst them there is no duty to 'purify the polluted', the rest of the village—like any other rural village in Gujarat—is divided by caste and sub-caste; a spatial configuration of 'untouchability'. Dalits are not allowed to enter the temple for instance, and there is no school for Dalit children near the Dalit community. The upper caste reside in the village center, surrounded by plentiful agricultural land for a comfortable living.

On several occasions, the local police station refused to register Natu's complaints against the village head and other village council members. Even after successfully filing a complaint, Natu faced further 'untouchability' in court. During the trial, sessions judge Mr Sethi Punjabi said to Natu,

> I am a Punjabi by caste. Even if someone called me 'Sikh' instead of 'Punjabi', I would not consider it as an abuse… It is normal, normal in the country. I also feel so. Why did you file a complaint? In my chamber, I used to have two sets of paper plates to offer snacks. I offer different plates to different people. In doing so, nothing is illegal and there are not any forms of discrimination. It is a personal choice. You should not take it as discrimination… When I was in Junagadh district, posted at Junagadh Court, I took a cigarette only when it was offered by a Patel (upper caste). I did not take cigarettes offered by other low castes.

Even for a judge in India's modern criminal justice system, it is not the law enacted by the state that is primary, but the law of tongues and customs. Although Natu has lodged a complaint against the judge, he is unsure when—if—he can expect equality before the court.

Such perverse beliefs regarding sacred duties and untouchability will continue to be quietly challenged, slowly but surely, by persons such as Jeena, Jush or Natu. Also known as 'broken people', these Dalit individuals are like the earth's grass, as described in the following poem.

The Grass
by Kim Soo-young

(This was Kim's last poem, written after the 4.19 (19 April 1960) people's revolution against the South Korean military dictatorship.)

Grass, lying down
Swaying from East wind carrying heavy rains
Grass, laid down
Burst out crying
Crying more as it is cloudy
Laid down again

Grass, lying down
Faster than wind, lying down
Faster than wind, crying out
Before the wind comes, standing up

Getting cloudy, grass lying down
Touching the ankle
Touching under the feet
Lying down after wind
Standing up before wind though
Crying after wind
Laughing before wind though
Getting cloudy, grassroots lying down

False charges and fabrication of cases in Sri Lanka

Asian Human Rights Commission

A study into several hundred cases clearly reveals the widespread practice of falsified criminal charges and fabricated cases against innocent Sri Lankan citizens. As a result of such fabrication, individuals may suffer prolonged detention without bail and severe harassment, particularly when they or their families complain about the false charges. They are also likely to be tortured at the initial stages of arrest, either to force them to admit to the false charges or to provide other information. Moreover, in the experience of numerous victims, there is no way of obtaining speedy investigations into allegations of false charges. In fact, even when the fabricated nature of the charge is proved at criminal trials, no action is taken against those who filed such charges, despite the country's penal code treating such fabrication as a crime.

The following three cases indicate the extent of such criminal behaviour amongst Sri Lanka's law enforcement mechanisms, as well as the heavy toll paid by those wrongly implicated.

1. Sarath Kumara Naidos: 'Illegal possession of heroin while in police custody'

Thirty-eight-year-old mason Sarath Kumara Naidos was arrested on 5 July 2008 at around 12:30pm and kept in police custody at the Moratuwa police station until July 12. At the time of arrest, the police accused Sarath of theft, which he denied. After being assaulted on a daily basis while in custody, on July 13 he was produced in court, where the police filed two cases against him. One was regarding theft and the other was for being in possession of 2300 milligrams of heroin at 11:30pm on July 12.

These are clearly fabricated charges; it is impossible for Sarath to have been in possession of drugs while in police custody. Complaints to this effect have been made to all police authorities, as well as to the Human Rights Commission and the National Police Commission.

Such fabrication was a result of the pressure put on the police to release Sarath; by charging him with a non-bailable offence, the police are now able to keep him in custody. The repeated assault that Sarath was subjected to after his arrest resulted in serious physical injuries, including losing control of his bowel movements. He was visited in custody by his mother, wife and sister as well as other family members, all of whom saw the condition wreaked by the daily assaults. In fact, his family feared that without proper medical treatment, Sarath may die from his injuries.

Verbal complaints as well as a written complaint on July 11 were made to the Human Rights Commission, regarding Sarath's illegal arrest, detention and torture. Written complaints were also sent to the Inspector General of Police, the Deputy Inspector General of the area and the National Police Commission by fax.

Two lawyers visited Sarath several times between July 5 and 13. He was even visited by the superintendent in charge of the Moratuwa police station. Only after a lawyer's notice was faxed to high-ranking police officers about the incident on July 12, was Sarath produced in court the following day. There, the magistrate approved bail for the theft charges, but had no power to do so on the drug charges.

2. Dodampe Gamage Asantha Aravindra: 'Victim of acid attack but charged with illegal firearms possession'

In another case, a young man, Dodampe Gamage Asantha Aravindra, while in police custody, had acid thrown on his face by a truck-driver named Chandrasiri Mudalali and subsequently lost the faculties of one eye. While being treated at the Matara hospital, the police filed a fabricated case against him, charging him with the possession of a bomb. Furthermore, the police noted that Aravindra was fleeing after attempting to shoot truck-driver Mudalali, and that an unknown person in the crowd—which was helping the police catch him while he ran away—threw the acid on Aravindra's face. This person reportedly could not be identified because the incident occurred at night, in the dark.

In actual fact, Aravindra and his friend K J Thusara Chaminda were driving on a scooter to visit relatives on 28 February 2008. At around 5:30pm they passed a truck, whose driver crossed the road without checking for traffic. As the scooter passed by, the driver's hand lightly touched the scooter's rearview mirror, angering him and resulting in a heated verbal exchange between the two parties. The driver finally said, "You go ahead and let us see."

A short time later, the truck pursued and struck the scooter. Due to the impact, Aravindra was thrown some distance from the scene of the collision. When he managed to get up and return, he saw Chaminda and the scooter lying beneath the truck, whose driver had disappeared. Aravindra pulled his friend out and found that he was bleeding severely from an injury to his leg.

Aravindra left Chaminda near a house where he also kept the damaged scooter and went looking for a three-wheeler to take him to the hospital. As he was searching, one taxi stopped and police officers from the Pitabaddara Police Station with guns in their hands alighted. The truck-driver was also among them, and started beating Aravindra, saying, "You are the one who collided with my truck." They tied Aravindra's hands and legs and continued to beat him, even picking him up and dropping him several times.

When Aravindra called for water, the truck-driver gave him some liquid in a cup, which Aravindra soon realized was acid. He shouted and the truck-driver threw the acid onto his face; the liquid also spread to his eyes.

By this time, Chaminda had been brought to the same place and was also beaten by the police officers.

Both Aravindra and Chaminda were then taken to the police station, where the Officer-in-Charge and the truck-driver assaulted them again. When Aravindra screamed in pain from the aggravation of the acid burns by further beating, liquor—brought by Mudalali—was poured on the burns.

Aravindra's father learned about the incident at around 11pm that night, but when he went to the Pitabaddara Police Station he was not allowed to see the two young men. Permission to see them was denied on the next day as well. The family was not even allowed to bring them food and drink. Aravindra's father was told that some local people had assaulted Aravindra and thrown acid at him, and that a gun was discovered in Chaminda's possession. Aravindra's father then pleaded with the police to take his son to a hospital. Although the officers said they would do so soon, in fact they did not.

On March 1 at around 3pm, Aravindra and Chaminda were taken out from their cell and photographed by some cameramen and journalists. The Officer-in-Charge asked Aravindra to remove his shirt and his father saw that the left side of his chest showed severe burn marks. There were also wounds on one of Thusara Chaminda's legs. Aravindra's father was then ordered to pay Rs 175 for the photographers, while the two young men were taken back to their cell.

Aravindra's father then contacted an attorney, who called the police station and was also told that the two men would be taken to the hospital. Later, Aravindra's father received a call that the two men had been taken to the Moravoka Hospital. Upon visiting the hospital however, he could not find either of the men, so he returned to the police station. There a police officer approached him and said, "You better go away otherwise somebody may kill you." He replied, "Even if I am killed I will not move away."

At about 7pm Aravindra and Chaminda were put in a police vehicle with Aravindra shouting to his father, "Please don't go home, they may kill us." His father replied that he would follow them. The police car drove to the Mathara Hospital, where Aravindra was hospitalized until March 5. The specialist treating Aravindra told his father that the delay in treatment had cost Aravindra the sight in one eye.

On April 3 Aravindra underwent eye surgery, which unfortunately worsened his situation, and he was then transferred to the Colombo Eye Hospital, where he continues to get treatment. By this time Aravindra's hearing in one ear had also deteriorated.

In the meantime, the Pitabaddara police filed charges against Aravindra and Chaminda for possessing firearms, attempting to shoot a person and attempting to engage in robbery. In contrast, no action has been taken against the truck-driver or the police officers for their severe assault of the two youth. Also, no inquiry has been initiated in the holding of the youth at the police station for more than 24 hours and preventing them from getting medical treatment for their serious injuries. While their assaulters remain at large, Aravindra and Chaminda have to face fabricated charges.

3. Lalith Rajapakse: 'Torture victim acquitted in court, but no punishment for officers who filed false charges'

Lalith Rajapakse was arrested by the Kandana Police on 20 April 2002 and subjected to severe torture. Among other injuries, the torture harmed his brain and left him unconscious for over 15 days, forcing the police to hospitalize him. The report of these injuries led to considerable publicity, and subsequently one police sub-inspector was charged. This case, filed under Sri Lanka's torture law (Act No 22 of 1994), is still pending before the Negombo High Court.

In the meantime, in retaliation against the torture complaints, the police filed three fabricated cases against Lalith before the Magistrate's Court of Wattala. Subsequently, officers came to court regarding two of the cases and declared that at no time had they

made any complaint against Lalith. Moreover, the sub-inspector who arrested Lalith admitted in court that neither at the time of arrest, nor at any other time thereafter, had the police received any complaint or evidence against Lalith. Although Lalith was acquitted of both charges, there has been no investigation against the officers who fabricated such charges.

The third charge against Lalith was of attempting to obstruct police officers in the course of their duty, for which there was no evidence for several years. Finally, an application for mandamus on behalf of Lalith was filed against the police officers and attorney general in the Court of Appeal. While the attorney general agreed not to proceed with the case, no inquiries have been made regarding the fabrication of the charge.

Endemic delays bring down Delhi justice system

Asian Legal Resource Centre

Press release by the Asian Legal Resource Centre: ALRC-PRL-002-2008

(Hong Kong, July 21, 2008) Endemic delays in criminal trials are hastening the collapse of Delhi's criminal justice system, a new report has found.

The 80-page report, "Judicial delays to criminal trials in Delhi", has been published by the Asian Legal Resource Centre (ALRC) to emphasize how India's legal system is failing to cope with the immense number of cases brought before it daily, with over half of the cases brought to the courts in Delhi taking at least one year and up to five years to complete, and courts daily hearing cases concerning crimes committed over 20 years earlier.

"Simply put, when it takes years and even decades for the courts to resolve simple criminal cases, the description of this system as a system of justice is an utter joke," Basil Fernando, executive director of the Hong Kong-based regional group, said on the release of the report.

Fernando emphasized that although the report was on Delhi, it could be read as indicative of the conditions across the whole of India.

"In fact, in many parts of the country, conditions are far worse than this," Fernando added.

Salar M Khan, the report's author, studied pending cases before the courts of Delhi and found that on the ordinary working day of 16 November 2007, a single magistrate had the incredible number of some 74 cases to examine.

His findings reveal that in the sessions courts the overwhelming majority of cases had been pending for more than a year. Specifically:

- Around 67 per cent of the pending criminal trials were one to five years old, 12 per cent six to ten years, 4 per cent 11-15 years, and around 2 per cent more than 15 years old.
- On November 16 a mere 14 per cent of the matters had come up for trial in the same year as the crime had allegedly occurred.

Similarly, in magistrates courts approximately 51 per cent of cases were between one to five years old, 21 per cent six to ten years old, 7 per cent 11-15 years old, and around 1 per cent pending for more than 15 years. In these only 20 per cent of the matters taken upon the day studied pertained to 2007.

The study also showed that approximately 40 per cent of the matters listed before the courts of additional sessions judges, roughly five matters per court per that day, were not even for the purpose of trial, whereas for magistrates an incredible 70 per cent of matters were listed for miscellaneous purposes rather than actual trial.

Despite all this, the courts remain a low priority for the government. Whereas its budget had over the last two years increased by 61 per cent, the increase for the judiciary had been only 37 per cent, the report notes.

Apart from the sheer number of cases and lack of funding and judges, other causes for delays uncovered in the report include that:

- Court working days in 2007 were only around 280. After leave days and other reasons for judicial officers being absent, such as training and official functions, were deducted, this number comes to around 220 days per year.
- Around 59 per cent of cases in magistrate courts are pending at the stage of prosecution evidence, with about 13 cases posted to record evidence per day, resulting in a culture of adjournment that only exacerbates problems.
- Some 55 per cent of cases handled in the courts of magistrates are sent up to be studied under section 138 of the Negotiable Instruments Act, 1881, which relates to dishonoured cheques. The needless load of these cases on the criminal courts is a consequence of the corresponding failure of the civil justice system.

The report also contains ten detailed case descriptions, summaries of some of which are below.

In a second part to the study, Khan looks at proposed amendments to criminal procedure in India aimed in part at addressing these delays and other flaws in the system. He finds

that although motivated to address genuine and serious problems, most of the proposed solutions are likely only to undermine further the entire judicial system.

"Many provisions of the (amending) Bill are either deficient or entirely incompatible with settled principles of criminal jurisprudence," Khan, a practicing lawyer, states.

He points in particular to those aimed at preventing witnesses from reversing their stories during trial, the deleting of summons procedure, and a number of other proposed changes that would "sacrifice justice for administrative expediency".

In his introduction to the report, Bijo Francis, a programme officer of the ALRC, points out that the extent of decay in the Indian legal system uncovered in the report is often concealed by attempts to promote the relative independence and creativity of the courts.

"Discussions about the Indian legal system often revolve around the innovative methods that its courts have used to intervene on socially and politically important issues," Francis says.

"However, the independence of the courts and judges is but one factor in a meaningful and functioning legal system. Domestic laws, ease of access, court facilities, speed of trial and the quality of legal professionals are among the other important elements," he notes.

"Among these, the time that it takes for Indian courts to dispose of cases is something that the government does not advertise abroad, yet it is perhaps what distinguishes India's courts most markedly from those in other jurisdictions in the region and perhaps all around the world," Francis says.

"Whereas a two or three year delay in an ordinary case even in relatively underdeveloped jurisdictions is considered unreasonable, in India a delay of ten years fails to excite interest or sympathy for the affected parties, most of whom, whether the accused or victims, are poor," he adds.

The special report is published in the June edition of the ALRC's quarterly periodical, article 2, and is available on its website: www.article2.org.

A PDF version can be downloaded directly: http://www.article2.org/pdf/v07n02.pdf.

It is the first extensive report on Delhi published by the ALRC and the fifth edition especially on India.

Earlier special editions that have studied militarization and impunity in Manipur and reported on two people's tribunals on severe hunger in Uttar Pradesh and West Bengal are also available online.

Other recent special editions have examined the courts and policing in Burma and the Philippines, and looked at the prosecution systems of a number of Asian countries.

JUDICIAL DELAYS TO CRIMINAL TRIALS IN DELHI

A snapshot of the courts in Delhi

Criminal courts per million inhabitants: 7.94
Caseload listed with additional sessions judges on 16 November 2007: 531
Cases per judge: 12
Caseload listed with metropolitan magistrates on 16 November 2007: 6801
Cases per metropolitan magistrate: 74
Percentage of criminal cases pending in additional sessions courts for 1 to 5 years: 67%
Percentage pending for 6 or more years: 18%
Percentage of criminal cases pending in magistrates courts for 1 to 5 years: 51%
Percentage pending for 6 or more years: 29%

Extracts from some of the cases studied

State v. Durga Burman: "The accused was poor and could not engage a private lawyer [on a drugs charge]... He remained in jail for around 20 months during trial... The police took around six months to file the forensic science laboratory report... The case came up for hearing on 33 dates... The court acquitted the accused... The judgment was dictated to the stenographer and taken in short hand, which shows that the judge did not have sufficient time to write the judgment even on that day."

State v. Ravinder Kumar: "The trial in this case started on 12 December 2000; however, no efforts were made to summon the injured/complainant expeditiously. He was summoned first time for tendering his evidence on 25 May 2005. The prosecution did not make any efforts to trace this witness till 27 January 2006... The court issued a summons to trace him; however, there is nothing on record to show that efforts were made to do this except from filing the same old report that he had left the given address. Non production of this witness caused unnecessary harassment to the accused for more than seven years and resulted in a denial of justice due to the miscarriage caused by the delay."

State v. Afsar: "The trial took more than 11 years to conclude. There were only two witnesses; both of them were policemen. Neither was examined and the accused person had to suffer 29 days in prison and 11 years on trial..."

State v. Shahnawaj & Another: "These proceedings [on wrongful restraint and simple injury] continued for around nine years from the date of incident. The offences were allegedly committed on 5 November 1998. The first date for recording of prosecution evidence fixed by the court was 15 September 2005. During the course of trial only two out of six witnesses cited in the charge sheet were examined. Meantime, the injured/complainant died, not due to the injuries inflicted by the accused persons but of a natural death, before he could be brought in the witness box... prior to the start of prosecution evidence being given, yet the prosecution neither informed the court of the exact date of death nor was any document confirming his death ever filed in court."

State v. Shiv Pujan Rai and Another: "The case came up for hearing [on drugs charges] before the trial court on 62 occasions. The judge was not available on 13 occasions. One or the other of the lawyers appointed by the court was either absent or quick in seeking adjournments. Recording of almost all of the witnesses continued over more than one sitting per person for various reasons, either because the judge did not have time or defence counsel were either absent or sought adjournment. On two occasions recording of evidence was stopped for the reason that one suitcase which was to be shown to the court as evidence was accidentally locked and the police could find any person to open it. The prosecution did not produce the three police witnesses of recovery at the beginning of trial. They were produced last. Discrepancies in their testimony could have had significant bearing on the release of the accused persons on bail... Both remained in jail for about four years. Ultimately the court held that the prosecution had failed to prove its case and they were acquitted."

State v. Sri Chand and Others: "The [murder] trial continued for around five years. Finally, the trial court, disbelieving both the eyewitnesses, acquitted the accused persons. The eyewitnesses made representation to the Delhi state government to appeal against the acquittal. The state government informed them that it would appeal against the judgment and that the file had been sent to the concerned sub-divisional magistrate for filing in the Delhi High Court. However, no appeal was ever filed. Ultimately both the eyewitnesses were forced to file a criminal revision petition against the judgment, in February 1998, which remained pending for more than nine years before the Delhi High Court. The court in its judgment dated 13 July 2007 refused to interfere with the acquittal and dismissed the petition."

Asia/Hong Kong: AHRC supports petition to suspend levy of all foreign helper's contracts

Asian Human Rights Commission

In response to the calls by migrants and other civil groups, the Hong Kong government has decided to suspend the levy for two years from August 1 instead of September 1. The suspension will now include existing contracts as well, only if employers are willing to renew those contracts in advance. This response by the government still does not truly alleviate the vulnerability of the workers, as noted in the following press release and petition. Further information regarding the levy and the situation of FDHs can be found here: http://dayuhan.wordpress.com/.

Press release by the Asian Human Rights Commission: AHRC-PRL-023-2008

(Hong Kong, July 25, 2008) The Asian Human Rights Commission (AHRC) supports a petition seeking the suspension of a levy, not only for new but for existing contracts of Foreign Domestic Helpers (FDHs), to avert threats to their job security.

On July 17, the Hong Kong Labour Department announced it would seek an amendment to the existing Employees Restraining Ordinance, which imposed a HKD 9,600 (USD 1,230) levy on employers for their worker's two-year contract for a period of two years. It sought the suspension to take effect by 1 September 2008.

The measure has been sought in an effort to relieve the employer's financial obligations because of the soaring inflation rate in the territory in recent times. However, even before it took effect some employers terminated early their worker's contracts, others delayed the hiring and thousands of others face threats of termination.

This has in fact prompted the Labour Department to reconsider its early proposal to have the suspension take effect from September 1 to August 1. However, this has not been able to avert the situation as some employers continue to carry on terminating contracts, and others are reportedly keen on doing so given the amount they could save.

"Since this proposal came out, there has been a pattern of termination of contracts amongst the workers. We have yet to get the exact number," said an organizer for Filipino migrant workers.

Apart from Filipinos, there are also FDHs which come from other Asian countries—Sri Lanka, Thailand, Nepal, Indonesia and Bangladesh, who would be affected. As is already known, these are workers whose families back home are financially dependent on the remittances they send from their work here.

In their written submission below before the Legislative Council, an alliance of migrant workers called the Asian Migrants Coordinating Body (AMCB), is petitioning that the suspension of the levy should also include existing contracts and those signed prior to August 1. They are deeply concerned that unless those existing contracts are covered, they face threats of being terminated.

For instance, an employer would be able to give a worker one month prior notice before terminating a worker's contract. Once a notice is already given, the employer's obligation would only be to cover the worker's plane ticket, which is around HKD 2,000, upon the due date—cheaper compared to the HKD 9,600 they could save if the levy is suspended.

The AHRC shares the serious concerns of migrant workers on this issue. We are also forwarding below the full text of the position paper by the AMCB, which has been submitted before the Legislative Council, explaining the implications of this levy suspension. It calls upon the Council to seriously consider this matter.

The AMCB is also calling everyone concerned for the plight of the affected migrant workers to participate to demonstrate for this call on Sunday, July 27 at 3pm to 5:30pm at Chater Road in Central, Hong Kong.

FULL TEXT OF SUBMISSION TO THE LEGISLATIVE COUNCIL:

Submission of the Asian Migrants Coordinating Body (AMCB) to the HK Executive Council on the suspension of the levy on 22 July 2008

We, foreign domestic workers (FDWs) from different Asian nationalities, wish to forward our views and position to the Executive Council of the Hong Kong government with regards to the suspension of the levy and its implementation on August 1 as recommended by Labour and Welfare Secretary Matthew Cheung and the HK Immigration Department:

1. Suspension of the levy must be implemented for all FDWs – those with ongoing contracts and those who will apply on or after August 1

To exclude the ongoing contracts of more than 200,000 FDWs from the levy suspension puts our jobs in jeopardy. Employers will surely opt to terminate ongoing contracts for which they are paying the levy for and then hire a new domestic worker in order to avail themselves of the levy suspension. In fact, we have already received reports of FDWs with ongoing contracts who are already being threatened with contract termination.

1.a. The Immigration Department is not grounded in the reality of our employment situation when it said that termination of contracts will not happen. It is not true that employers shall be paying more if they hire a new employee because they have to pay for wage for one month, holidays, and the airfare of the FDW.

Whether the levy is suspended or not, wage and holidays are obligations that should be paid for. An employer only has to give a one month notice to an FDW, make her work for that month and the wage the employer will give is already covered by the said month's labor.

This leaves only the airfare as the true additional payment. This shall only cost less than HKD 2,000 and compared to what can be saved from paying the HKD 600 levy, any practical-thinking employer will choose the former.

Also, the employers can then hire someone who is already in Hong Kong to further be exempted from paying for the airfare of their new employee.

1. b. The threat of termination of ongoing contracts is clear and present. Only the lack of a final guidelines of the implementation of the suspension inhibits employers from finally ending current contracts.

If the HK government decides to suspend the levy only for new contracts, we are expecting an avalanche of termination of jobs of FDWs. It will surely be catastrophic for many of us who will not be covered by the levy suspension.

To move the start of the implementation of the suspension to an earlier date but with the same framework of covering only new contracts will only mark an early open season for termination of contracts.

We attached herewith a partial list of cases of FDWs whose job security are now threatened just with the announcement of the levy suspension. Surely the number will skyrocket as soon as the date of implementation is finalized and ongoing contracts are not covered.

1. c. According to the Chief Executive, the suspension of the levy is supposedly made to give relief. How it can be so if the majority of FDWs are excluded?

For the part of FDWs with ongoing contracts who are the great majority, to have an exclusionary levy suspension is no relief at all. In fact, the risk to our job security that it has resulted in worsens our anxieties.

If ongoing contracts shall not be included in the suspension, it will not also relieve immediately many employers, especially the middle-income earners, of the burden of the levy. They have to wait for many more months just to get qualified to the levy suspension.

1. 2. Delay in the implementation of the levy threatens the employment of FDWs who are now renewing their contracts as well as new FDWs

When the government announced the suspension but without clear guidelines and specific date of implementation, it has created the thinking among employers to wait and see before pursuing the contract processing of an FDW. Thus there have already been cases of withdrawal of employment contract by employers who decided to defer the processing of the contract of the FDW until the suspension is implemented.

FDWs who have experienced this are now left in limbo for they are not allowed to work while waiting for their visa here in Hong Kong. Those who will be forced to make an exit are also worried if their future employer will pursue their hiring.

This, however, is just the tip of the iceberg. Still the biggest problem is the resulting open season of contract termination due to the non-coverage of existing FDW contracts.

Only by making the policy applicable to all contracts will this be prevented.

1. 3. Discussions on the levy suspension have excluded the views of FDWs who were the ones gravely affected by the levy when it was implemented in 2003 and are now also bearing the immediate brunt of the suspension.

We are highly-disappointed by the reported remarks of Labour and Welfare Secretary Matthew Cheung who was quoted as saying that "it is understandable that employers have concern and confusion. We will do what we can to make this measure beneficial and convenient to employers". (South China Morning Post, page 1)

We ask why our situation and wellbeing are not considered. It is inconsistent of the Hong Kong government to have passed a Racial Discrimination Ordinance recently and then, after only a few days, blatantly disregard one of the biggest sector of ethnic minorities.

What is urgent right now is for the suspension of the levy to cover all contracts of FDWs (ongoing and new) and to be implemented immediately.

The matter of what will be done to the levy already paid for in full or in installment for ongoing contracts can follow from this decision. The government may decide to refund them and refunds can be made pro rata and can be issued in lump sum or installment. The government can as well decide to put a cap on the collection of those who are paying the levy in installment basis.

We maintain that the suspension of the levy must also benefit FDWs from whom the levy was taken five years ago. This can be in the form of a significant and substantial wage increase.

We urge the Hong Kong Executive Council to take these points into account when it discuss and finalize the details of the levy suspension.

The Hong Kong government has pledged to share the benefit of the economic boom to the people of Hong Kong. FDWs are also workers and have also contributed to the economic rebound.

Our rights, job security wellbeing must be protected and upheld. Suspension of the levy must cover ALL CONTRACTS and must be done NOW.

If justice is to be given to foreign domestic workers, the HK government must totally do away with the levy in the future.

Submitted by: Asian Migrants Coordinating Body (AMCB)

Members:
Association of Indonesian Migrant Workers (Asosiasi Tenaga Kerja Indonesia, ATKI)
Association of Sri Lankans (ASL)
Far East Overseas Nepalese Association (FEONA)
Friends of Thai (FOT)
Thai Regional Alliance (TRA)
United Filipinos in Hong Kong (UNIFIL-MIGRANTE-HK)

Sri Lanka's prison conditions

Park Mihye, Intern, Human Rights Office, Sri Lanka

It has been said that a country's human rights can be understood by its prison conditions. In other words, prison conditions can be seen as a barometer of human rights. Sri Lanka's prison conditions are surely indicative of a dysfunctional judicial system, where money or power influence judicial procedure. Most Sri Lankan prisons for convicted offenders were built over 100 years ago by the British, at a time where the country's population was about three million. Imprisonment is the ends of the Sri Lankan criminal justice system, which has not been working right.

The inside story

I visited the Bogambara prison during a monthly program held by a local human rights group. The program provides the prisoners with an opportunity to watch educational videos, to concentrate their thoughts and express their own ideas.

The small garden improving the prison environment is opposite the main gate, while the kitchen where prison meals are prepared, is a short distance from the main gate. The kitchen looked quite nasty and unsanitary, and none of us was even aware that it was a kitchen until a group of prisoners who worked there mentioned it. It is quite uncertain that the prisoners are provided food of adequate nutritional value, of wholesome quality, and well prepared and served. Next to the kitchen, there was a warehouse, computer room, tailoring room, a tap water facility, and a small ground where prisoners play sports like volleyball.

The prison has 328 cells, and there are five or six prisoners in each cell. As of 10 May 2008, the number of prisoners is up to 2,400. Since each cell is too small for six persons, the prisoners lie down one by one tightly without any mattress, blanket or pillow. Some sleep huddled up. According to the prison's welfare officer, if the court sent 1,000 persons at once, they would have to hold them with no consideration of the prison's capacity. Moreover, he said that there has been no attempt to improve the prisoner's condition where it is already terrible.

The prison was constructed nearly 100 years ago. It is too old to keep properly clean and is not able to incorporate modern equipment. The run-down building cannot hold

sufficient facilities for 2,400 prisoners and so suffers from problems such as tap water access, and insufficient toilets and bathrooms.

There is no library. There is no doctor for the 2,400 people stationed on the grounds. Prisoners are not permitted to watch TV, and have no private space. It cannot be reasonable to suffer this miserable situation just because they are prisoners or criminals. They should be given the minimum facilities to live decently and with dignity as human beings, whether they are murderers or robbers.

The Sri Lankan prison system isolates criminals from society. However, since it is impossible to isolate all criminals, the prison has to also give prisoners the opportunity to prepare for a new start in society. One encouraging factor amidst the prison's terrible environment was its education curriculum, which allows prisoners to learn skills with 32 instructors teaching 13 different subjects.

The purpose of imprisonment

Within Sri Lanka the prison system is described as 'correctional services'; individuals are sent to prison for a specific purpose. They are given an opportunity to reexamine the various factors that led them to commit crimes. Traditionally, it is seen as an opportunity to 'correct' oneself. It must therefore be asked whether the prevailing prison conditions within the country are conducive for such a task, or whether they are designed to project the image that prisoners are a condemned lot, not deserving any respect or attention. In fact, the system has little room for the idea that 'correctional services' should be designed to help inmates look at their lives from a different perspective.

The prisoners have the right to enjoy basic human rights, with the exception of the right to mobility. But the denial of this right has repercussions on a number of other rights, and this needs to be recognized. Furthermore, the behaviour of the inmates must be controlled in a human manner, ensuring that a climate of fear and hatred are eliminated and replaced by respect and dignity. Self respect is the basis for respect of others; the present prison conditions generate only feelings of disrespect and humiliation. Prisons are not meant to be places empty of human rights.

The Human Rights Office of Kandy, a local rights group, attempts to help prisoners retain their self confidence in an atmosphere lacking in dignity and respect. Its work is also important in raising discussion within society regarding poor prison conditions as well as future rehabilitation programs. Sri Lankan society needs to break away from seeing prisoners as condemned and worthless persons.

Thailand's human rights chief must resign

Awzar Thi

The chairman of Thailand's official human rights body, Saneh Chamarik, on 29 July 2008 sent an open letter to the head of the United Nations expressing his agency's most serious concern and dismay at a "blatant violation of human rights."

As the writing of an open letter to the UN secretary-general is an unusual step for a statutory rights bureau, and given its strident tone, readers might expect that its topic would be one of utmost importance to the defense of human dignity in Thailand.

This would be mistaken. The purpose of the National Human Rights Commission's letter was in actuality to lay blame for a puerile spat over an historic temple between the governments of Thailand and Cambodia with a UN committee.

According to Saneh, it is the World Heritage Committee, rather than politicking and self-interested nationalist leaders, that has somehow "endangered the lives of those who live along the Thai-Cambodian border."

But Saneh does not stop there. He goes beyond any pretence of concern for the integrity of people residing nearby the contested site to lobby unashamedly for his own country's claims.

"It seems that the views of the Thai side have been consistently overlooked," he shrills, before concluding with a demand for an inquiry of some sort or another.

Official politeness will oblige a response, but it is hard to imagine the letter being received in New York with anything other than incredulity.

Although the National Human Rights Commission of Thailand has had its share of ups and downs and is certainly not alone among its peers in Asia in having missed the point of its work from time to time, other blunders pale in comparison to the disgrace caused with this outburst.

Not only was it ill-timed, coming after the Cambodian general election when both sides had already agreed to pull back troops, but it was also extremely ill-considered, as in taking aim at the United Nations rather than the conflict's protagonists it has seriously undermined the credibility of the commission at a critical time in its history.

It should be remembered that the commission did not emerge from a Bangkok bureaucrat's flight of fancy or even from the work of its current members, but from a hard-fought global struggle to articulate, organize and defend the rights and dignities of everyone.

It owes its mandate and voice to this struggle, and in exchange is obligated to uphold its values and use that voice to articulate them.

This means that it is expected to comply with the terms of what are known as the Paris Principles if it is to be treated as a proper functioning human rights agency and be given due respect and standing in international gatherings and debates.

Among these principles are that the commission be functionally and financially independent, and that it serve as an advisor to its government on human rights standards, abuses and laws.

This role precludes it being turned into a mouthpiece for government policy, or for any rhetoric that is unrelated to explicit human rights concerns.

Although Thailand's commission is at present classed as fulfilling the principles, its status can't be taken for granted. A governing body can review members at any time and strip them of their status if they cease to pass the minimum standards.

This happened to Sri Lanka's human rights agency last year, after its government appointed new commissioners outside of the principles' terms, despite complaints from local and regional groups as well as repeated warnings from independent UN specialists.

While for Thailand there is no immediate danger of its commission losing official standing, with the sending of this letter it has certainly lost face.

As the commission's terms have been altered under the army-sponsored Constitution of 2007, the time is drawing near for a new law to be passed that will regulate its work, and for the appointment of new members.

But its chairman's time is well and truly up. Saneh Chamarik's letter to the United Nations is an alert not to a human rights crisis in Thailand but to one in his own agency. It is an advert for how far off the track he has taken it since September 2006, and a warning of what more may come if he is allowed to remain in the post until a replacement is appointed.

The only thing now is for Saneh to resign. His role as head of the National Human Rights Commission is not as a foreign policy propagandist but to uphold and defend human rights. As that role is now untenable, he must get out. Let another commissioner act in his stead until a new commission is appointed. None could do worse, and some could even get it moving back toward its real purpose. Above all, let there be no more like Saneh put in charge again.

This article was originally published on 31 July 2008 for a column entitled Rule of Lords at http://www.upiasiaonline.com/Human_Rights/.

Practicing Ethics in Action

Ethics in Action begins with the realization that both law and morality have failed the people of many countries, who are today facing incredible forms of cruelty that they have little power to eradicate. Despite all the rhetoric of empowerment, the reality witnessed in most Asian countries is desperation and powerlessness. The two ingredients necessary for any real empowerment of ordinary people are law and morality. If living conditions are to improve, defective legal systems and the failures of upholding ethics and morality cannot be ignored. *article 2,* a bimonthly publication of the Asian Legal Resource Centre, sister organization of the Asian Human Rights Commission, is devoted to discussing matters relating to defective legal systems obstructing the implementation of human rights. *Ethics in Action* will be devoted to discussing how movements and leaderships claiming to uphold ethics and morality have failed to promote and protect human rights.

Other regular publications by the Asian Human Rights Commission:

Article 2 – This quarterly publication covers issues relating to the implementation of human rights standards as proposed by article 2 of the International Covenant on Civil and Political Rights.

Human Rights Solidarity – Also a bi-monthly publication and available both in hard copy (from July 2007) and on-line. This publication covers stories and analysis of human rights violations in Asia.

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