

# Ethics in Action

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ASIAN HUMAN RIGHTS COMMISSION (AHRC)

**Cover photo:**

CAFGU members at a checkpoint en-route to Pikit,  
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# **Policies arming civilians a product of vigilantism**

*Danilo Reyes*

To enforce laws and protect communities from security threats is the sole responsibility of the state. In the Philippines however, the government has been promulgating policies that allow it to abdicate this role, such as the arming of civilians and granting them equal responsibilities and functions as law enforcement officers. This is all done on the pretext of upholding “civilian supremacy”, whatever that may mean.

The government’s announcement in August of this year that it would begin recruiting and training Police Auxiliaries (PAXs)—civilians who are armed and under the supervision of the Philippine National Police (PNP)—came as no surprise. Policies of using paramilitary forces in addition to regular soldiers in actual fact began in the late 1980s.

It was on 25 July 1987 when Executive Order (EO) 264 was signed by former president Corazon Aquino, which provides for the creation of—as they are known today—the Citizens Armed Forces Geographical Unit (CAFGU). This fateful order has since been the root justification of all policies relating to the arming of civilians. According to the order, article XVI, section 4 of the 1987 constitution legally mandates such a policy, stating that, “the Armed Forces of the Philippines (AFP) shall be composed of a citizen armed force which shall undergo military training and serve as may be provided by law”.

The government at the time claimed that the CAFGU was indispensable in helping the military fight against the communist insurgency, after democracy had been restored to the country following a people’s power revolt. Together with the CAFGU, anti-communist vigilante groups were also supported by the government, some of which were under the direct control and supervision of army commanders. President Aquino herself commended the ferocious vigilante group ‘Alsa Masa’ in Davao City, for helping the government fight the insurgents. The fact that these groups viciously targeted any persons even suspected of being communist supporters was overlooked.

Soon however, serious allegations were made against CAFGU members of involvement in human rights abuses. In fact, popular perception found their behavior synonymous to the atrocities committed by anti-communist vigilante groups. This prompted the government to consider deactivating the CAFGU in 1993, as a result of which about 80 CAFGU units composed of 10,000 members were disbanded. Not only does this disbanding

indicate a policy failure, it also indicates that an effective disciplinary mechanism and system of accountability in addressing human rights abuses was lacking.

While the discipline of CAFGU was to be governed by the same regulations as those overseeing the Philippines military, it is widely held that in reality this was not the case. Insufficient information exists regarding whether or not CAFGU members were disciplined and held to account according to military guidelines, although the Philippines Commission on Human Rights did report in March 2000 that 1,070 CAFGU members have been charged in 853 cases filed at their office for committing human rights abuses. Presumably, these complaints exclude those filed before regular courts.

Despite the reports of atrocities and abuses, in 1996 the government halted its plan to completely disband the CAFGU, on the pretext that the activities of “dissident and terrorist (DT)” groups—referring to rebel and armed groups—have renewed. With the government having thus turned a blind eye to the failure of its policy of arming civilians, the CAFGU continue to exist as a part of the state’s armed forces. As of September 2007, there were a recorded 60,000 CAFGU members active in the country, who also take part in combat operations together with soldiers.

The Philippine National Police has unfortunately copied this failed policy in its recruitment and training of civilian ‘police auxiliaries’ beginning August 2008. Apart from the military, armed civilians can thus now also be found in the roster of the police force—making up the Civilian Volunteer Organization (CVO) and the PAX. They are not regular policemen, but are given law enforcement functions. The line between the duties and obligations of police officers and that of the PAX has thus been obscured.

It is important to note that even before the renewed fighting between Muslim rebels and government forces broke out in August of this year, the CAFGU and CVO had been part of the military and police respectively. The creation of the PAX therefore merely affirms an existing policy. Ignoring the opposition to the continued use of civilian militia and the government’s failure to disband the CAFGU, even President Arroyo has now promoted and endorsed the continued use of these groups as “force multipliers” of the armed forces.

The signing of the EO 546 by President Arroyo on 14 July 2006 directed the police to undertake active support to the military in internal security operations. In particular, the police force was to provide “support (to) the AFP in combat operations (which) involves the suppression of insurgency and other serious threats to national security”. The police were also given authority to “deputize *barangay tanods* (village watchman) as force multipliers in the implementation of peace and order plan”. The order also required all Local Government Units—involving the cities, municipalities and provinces—to ensure funds for operation and logistical support to concerned police units are “sufficient”, unlike the CAFGU, where the budget comes from the Department of National Defense.

Nothing in the provisions of the EO 546 clearly states that the PNP would be given authority to arm civilians; however, both the PNP and the Department of Interior and Local Government (DILG), justified their actions of August 2008 by pointing to the EO 546. It can also be said that the basis for the EO 546 can be found in the EO 264 issued in 1987 by former president Aquino.

### **Checkpoint sentinels**

Travelling for a few hours on a bus from the city of Davao towards the municipality of Midsayap, North Cotabato will give an idea of the authority and functions of these civilian militias—CAFGU and PAX. When my bus was stopped at a checkpoint before entering the municipality of Pikit, North Cotabato, I was confused by civilians wearing camouflage uniforms and carrying firearms, boarding the bus and ordering all male passengers to alight for routine inspections. The immediate question that sprung to mind was who are they, since they are obviously not soldiers. Only after reading their badges and nameplates did I realize they were CAFGU.

In another incident, as we approached the bus terminus in Digos City, a man carrying a baton with a huge sign of “Police Auxiliary” on his back, came aboard and inspected all the luggage. While this police auxiliary member was conducting his inspection, the police officers accompanying him waited outside the bus.

Therefore, it can be seen that one month after renewed fighting broke out in Mindanao in August, the CAFGU and CVO have been deployed on the frontlines, while the PAX are at highway checkpoints, inspecting passenger buses. Some CAFGU members also inspect the buses. Routine security inspections however, are supposed to be the sole responsibility the police.

Apart from the question of whether or not they have the legal authority to conduct inspections, it is also obvious that these paramilitary officers have little—if any—idea of what are they looking for in people’s luggage. Moreover, how can sticks and batons accurately detect bombs? Without sufficient training and gear, how can these men protect the lives of commuters and civilians?

### **Recruitment and training**

When the PNP and DILG began the process of recruiting members for PAX, they assured the public that recruits would be properly “screened and trained”. In the meantime, the Deputy Director General, former chief of the Philippine National Police, Avelino Razon Jr., invited members of the ‘Ilaga’ vigilante group to apply as PAX. This is contradictory to the police guidelines that recruits should have good morals, and puts the credibility of the screening process into serious question. What morals and values could this vigilante



group, known for its violence during the 1970s-1980s, have to become police auxiliary members? The group was particularly active in North Cotabato, where the recruitment and training of police auxiliaries has begun. In fact, when the fighting broke out again between the armed forces and the rebels this year, it was reported that the Muslim rebels first clashed with the CAFGU and CVO in North Cotabato. The current actions of the Philippines police mirror those of the Philippines army in the 1980s, when they endorsed and encouraged vigilantism.

A source from the army's reserve unit confirmed that the requirement of rigid screening and training is not being implemented. According to the guidelines, the recruits should not be over 50 years of age, should have no criminal record and should undergo a psychological and drug test. In practice however, the recruits have learned that as long as they are able-bodied and have the village chairperson's recommendation—despite having no formal education or experience using firearms—they can apply to become police auxiliaries. In fact, with the village chairperson given the authority to approve who is to be recruited, the manner of recruitment has also become highly politicized. In every village, only five police auxiliaries can be recruited and the recruits must train in the same village that they will be deployed to. After their training, they would become additional forces of the CAFGU and CVO. It is likely that village chairpersons may use their authority to recruit persons to wield their influence, as well as the risk that these auxiliaries could be used as the chairperson's private army.

In any case, the (unmet) criteria for police auxiliaries' recruitment is lower than that of regular policemen, who are required to have completed their formal education, undergo several months of rigid training and pass a board exam. In addition, they are subjected to numerous internal disciplinary mechanisms as well as civil service regulations. None of this was considered necessary for the police auxiliaries.

It is unclear how much these police auxiliaries would get as compensation, but if it is similar to that paid to the CAFGU, it will be around USD 57 a month. The funding for this is to come from local government units. While their allowance is minimal, it is the resulting influence and benefits that entices recruits—mostly farmers—into applying. The hardships faced by some farmers due to the conflict, including not being able to cultivate and harvest their crops due to the fighting, also makes them vulnerable to recruitment. They may see this as a means of revenge against the rebels.

In the municipalities of Midsayap and Aleosan of North Cotabato, police auxiliaries have already begun their month-long training. The local officials there openly endorse the arming of civilians so they can protect their own villages. Upon the completion of their training, these paramilitary personnel are usually issued with a 'memorandum receipt', a document signed by military or police commanders granting individuals the authority to carry firearms.

After the government's recruitment of police auxiliaries, as well as its distribution of at least 13,000 shotguns to members of the CVO and PAX in the provinces of Lanao del Norte and North Cotabato, the situation there has become extremely volatile. According to the police, the reason for issuing shotguns rather than M16 rifles is that the former are not used for assault—suggesting that these armed civilians should not be involved in combat operations. However, in many conflicts, including the Vietnam War, shotguns are used as assault firearms.

The use of the CVO and CAFGU in the ongoing fighting in Mindanao has been particularly useful to the military due to their familiarity with local conditions and terrain. This gives them an advantage over regular soldiers who tend to be strangers to the area.

### **Civilians forced to bear firearms**

Many local officials are keen to endorse the arming of civilians. In Carmen, North Cotabato the village chairperson has been forcing the indigenous community to take up firearms. Many indigenous persons are unwilling to take part in the conflict, not wanting to be accused of supporting either the soldiers or the armed militias. In another village, residents were forced to contribute Php 200 (USD 4) per household for the purpose of buying ammunition. The money is being collected against people's wishes, and in spite of their daily struggle to buy enough food for their families.

In Lake Sebu, South Cotabato an indigenous community was issued with firearms, forcing them to fight against the Muslim rebels. This incident forced some of the villagers to leave. The displacement of villagers, as well as the significant number of arms distributed amongst communities can lead to serious social crises. This is particularly worrisome to a society as fragmented and with an already high level of violence as the Philippines.

It is highly disappointing that the government is continuing policies that are historically flawed. Even if there are dubious legal bases for the policies, they do not conform to international legal and human rights principles, or to norms concerning law enforcement.

The United Nation's Code of Conduct for Law Enforcement Officials clearly stipulates that those carrying firearms and performing responsibilities equal to those of law enforcement officers should possess the necessary "high degree of responsibility". When even the country's soldiers and police, who are accountable to existing disciplinary mechanisms, are found to commit abuse and atrocities, what can be expected from the paramilitary forces and armed civilians who are not bound to any code of conduct?

By justifying the arming of civilians, the government has encouraged the blurring of responsibilities. Whose job is it to enforce laws and maintain order? Who is to be held accountable when rights are violated, and under what mechanism? There are no clear answers to these questions, perpetuating the cycle of impunity.

Unless the government takes serious actions towards the disbandment of these forces, its claims to oppose the resurgence of vigilante groups in Mindanao will be seen as blatant lies. It is therefore of extreme importance that any policies and laws justifying the practice of arming civilians and the continued operation of the paramilitary forces be abolished. The policy of arming civilians itself endorses the notion of vigilantism.

# Orissa's ongoing violence against minorities

According to local sources, an estimated 50 deaths have occurred in the Indian state of Orissa over the past six weeks, with many more injured and their property destroyed. The most recent deaths reported were on October 2, when two Baptist men were killed and five Christian homes set on fire in the district of Kandhamal. On the same night, about 250 homes were set on fire in the neighboring district of Boudh, most of which belonged to Dalits.

*Asia Calling* reported General Secretary of the All India Christian Council, Dr John Dayal as having said that,

[One hundred and twenty] churches were destroyed in Orissa itself, some of them for the second time. More than 4000 houses have been destroyed. Women have been raped, nuns have been raped and priests have been killed. More than 50,000 people have been rendered homeless. Of them, more than 35,000 are in the forests and 15,000 are in the refugee camps run by the government, where the conditions are pitiable. They are living like animals and epidemics are likely to break out at any time.

## **Indian priest describes mob ordeal 'like being tortured for Christ'**

*Anto Akkara, Catholic News Service*

Father Thomas Chellen, undergoing treatment at a Catholic hospital in Bhubaneswar, India said he was grateful to be alive after a Hindu mob nearly set him on fire.

“They had poured kerosene on my head, and one held a matchbox in his hands to light the fire. But thanks to divine providence, in the end, they did not do that. Otherwise, I would not have been there to tell this horror,” the 55-year-old priest, director of the pastoral center at Konjamendi in the Indian state of Orissa, told Catholic News Service in a telephone interview from his hospital bed on August 28.

Following the August 23 murder of a Hindu leader, Swami Laxmanananda Saraswati, by Maoist extremists, Father Chellen said Hindu mobs started attacking Christian centers in Kandhamal, the district where the slain leader was based.

When a Hindu mob of 500 people broke into the pastoral center around noon on August 24, Father Chellen said he fled through the backyard with another priest and a nun.

“It was heartbreaking for us to watch from a distance the entire complex go up in smoke,” said Father Chellen, who had supervised the construction of the center that opened in 2001 and could accommodate 200 people.

“They vandalized everything and set it on fire. It has been reduced to ashes,” he added.

As the three watched from a distance, some other priests told them to flee.

“We fled to the jungles and came in the night to take shelter in the house of a Hindu friend and spent the night there,” Father Chellen said, adding that the second priest left them to join other priests.

The following morning, he said, the Hindu family moved the priest and nun to an adjacent vacant house and locked it to give the impression that no one was inside.

However, the Hindu mobs overheard the priest speaking on his cell phone, broke into the room and dragged him and the nun outside.

“They began our crucifixion parade,” said Father Chellen. The gang of about 50 armed Hindus “beat us up and led us like culprits along the road” to the burned pastoral center.

“There they tore my shirt and started pulling off the clothes of the nun. When I protested, they beat me hard with iron rods. Later, they took the sister inside (and) raped her while they went on kicking and teasing me, forcing (me) to say vulgar words,” said the priest who has cuts, bruises and swollen tissue all over his body and stitches on his face.

“Later both of us, half-naked, were taken to the street, and they ordered me to have sex with the nun in public, saying nuns and priests do it. As I refused, they went on beating me and dragged us to the nearby government office. Sadly, a dozen policemen were watching all this,” he said.

Angry at his plea to the police for help, the mob beat the bleeding priest again.

Later, a government official and members of the mob took the priest and the nun to the police station, where Father Chellen said he was kicked in the face.

“The four-hour ordeal ended when a senior police officer arrived in the evening,” said Father Chellen.

The priest said one of the most hurtful things about the incident was that some local Hindus whom he knew were watching the events and ignored his requests for help.

Later, the priest and nun were taken to a nearby police camp, he said.

“They were very kind to us, gave us clothes and slippers,” said Father Chellen.

On August 26, the priest and the nun were taken for medical tests. That afternoon they were sent by bus to Bhubaneswar.

Father Chellen said he was admitted to the hospital on August 27, while the traumatized nun was taken to a convent. He said the plans called for him to be moved to Mumbai for treatment.

Asked about the how the nun coped with the trauma, Father Chellen said: “We had no option and were simply following their commands. We resisted as much as we could. This is like being tortured for Christ.”

It is clear that the killing of innocent civilians and the wanton destruction of their property is occurring with the tacit complicity of the Orissa police and state officials. Also complicit are the neighbors of these victims, who stand by in silence—or even take part—as their fellow citizens are attacked for being of a different religion or caste. While there have been stories of exceptions, what is needed is for this to become the norm, as implied by the poems below. Only then can there be an end to the manipulation of violence and distrust by political and other interest groups.

**This brotherhood in evil I reject**

*Basil Fernando* ([www.basilfernando.net](http://www.basilfernando.net))

You say we are brothers  
And we have a common enemy  
You come with blood in your hand  
To prove to me you are fighting for me

As brothers we must jointly hate the other  
You tell me

In hate what brotherhood  
Can there be  
Must I teach my child to hate  
The way you say you do  
This brotherhood in evil I reject  
This I will not teach.

**I'm not involved**

*David Ronald Bruce Pekarul* (<http://www.myhiddenvoice.com/>)

Yes, I was there, but not involved,  
I never said a word,  
When they were tortured for their Faith,  
My life of ease, preferred.

I stayed inside my Comfort Zone,  
And did not make a move,  
I did not have a thing to say,  
And not a thing to prove.

Religious leaders said, "They're wrong,  
And everyone must die,"  
They asked me what I thought of it,  
But I had no reply.

I didn't want to state my view,  
Although I had a choice,  
I should have chosen right from wrong,  
And spoke up with my voice.

But I just stood there very mute,  
And didn't say a thing,  
When they were sentenced to their fate,  
My conscience felt a sting.

And now I live with what I've done,  
And when they come for me,  
I will not have a thing to say,  
Nor have a place to flee.

The following statement discusses the role of the Indian government in the violence:

**INDIA: Government of Orissa promotes violence**

*A joint statement issued by the Asian Human Rights Commission - Hong Kong (AHRC) the National Campaign on Dalit Human Rights - India (NCDHR) and the International Dalit Solidarity Network - Denmark (IDSN): AHRC-STM-243-2008*

The ongoing violence in Orissa, India reflects the current status of the rule of law in that state. The violent incidents that devastated the thin line of communal harmony in the state are the result of an intentional state policy of promoting vested religious interests. This ulterior motive to attain short-term political gains through unconstitutional and non-democratic means is also augmented by poor policing. The brunt of the resultant violence is borne by the Dalit, Christian and Tribal minorities.

The uncontrollable violence demonstrates that the state is not willing to combat anti-democratic forces operating in the state. It also exposes the connivance of state administration with these forces operating in India to destabilize the fragile social fabric.

The recent incidents that resulted in the loss of life and property in Orissa appear not to be as sporadic as portrayed. Some sources cite letters and other official correspondence received by the state administration warning them about the possibility of large-scale violence that could erupt at any time. These communications, while requesting protection for life and property, also informed the administration of the fear that violence will focus on minority communities in the state. Most of these communications were addressed to the state government representatives responsible for the administration and maintenance of law and order in the state.

These concerns have proved to be true from the incidents reported in Orissa during the past 24 days. It took about five to seven days for the state administration to even begin to start responding to the calamity once it began. During this time and even after, fundamentalist Hindu political parties terrorized the minority Dalit, Tribal and Christian communities living in semi-urban and remote villages in the Kandhamal district of the state.

The massive scale of violence resulted in at least 22 deaths and property loss worth millions of rupees, beginning in the Kandhamal district and soon spreading to neighboring districts. It showed a well-planned pattern of violence that was



orchestrated with precision. Such an assault, targeting communities spreading across an entire region, requires good planning and preparation.

There are allegations that the criminals had even prepared name lists of persons and their properties to be targeted during the violence. The commonly believed cause for the violence, the murder of five Vishwa Hindu Parisad (VHP) cadres, appears to have been an excuse to commence the carnage.

The media, by and large biased and communalized, has willfully hyped and misguided the general public into believing that the murder of the VHP cadres was the reason for the latest bloodshed. Contrary to these reports that were widely published in the national and international media, the violence in Orissa was not merely a communal fight between the Hindus and the Christians.

A deeper insight is gained into the violence if the following are noted: the preparations that were made before the incident; the pattern in which the violence spread; the evident reluctance of the state administration to react sensibly before and after the violence. This leads to the conclusion that the state administration is also a willing partner in the execution of the larger Hindutwa agenda in the state.

For the minority communities, particularly the Dalits and the Tribals, it means the continuation of oppression and the curtailment of all opportunities for liberation. In this context it is not a surprise that similar incidents are reported from other states of India like Karnataka, Tamil Nadu and Andhra Pradesh.

It appears that the Orissa state police and other agencies responsible for preventing violence and crime were aware of the preparations the criminals operating in the state were making. It is also certain that the police were aware which communities would be targeted by the criminals.

Similar violence of varying intensity has affected the state in the past decade. After each incident, the state police was accused of failure to investigate, prosecute and punish the criminals who orchestrated the violence. This is a key factor for a recurrence of the violence to further spread out affecting almost the entire state as on this occasion.

The role of the law enforcement agencies in a democratic setup is not just investigating crimes once they are committed. Proper investigation and prosecution of crime has its deterrent value. In addition to the investigation of crimes, law enforcement agencies have the duty to instill confidence in ordinary people, especially those who are most vulnerable. In this way, the rule of law is

maintained in the state and any breach of law and order will not go undetected and unpunished. In this context the state administration and the police force it commands cannot be absolved from the responsibility for the perpetuation of violence in Orissa.

The Central Government which is mandated to issue directions to the State Government under articles 256 and 257 of the Constitution is also equally responsible for its failure in protecting the people and arresting the perpetrators.

To make matters worse, the state administration prevented political leaders, media and human rights organizations from visiting trouble-hit parts of the state, while allowing the VHP leaders free mobility with state protection. For example, the entire Kandhamal district was put under curfew and was completely cut-off from the rest of the world for days. The people lived in fear for their lives and property. A large number of them sought protection by hiding in nearby forests at the time their properties were burned, looted and ransacked. Almost all of these people were Dalit and Tribal Christians.

It is reported that those who took refuge in government shelter camps were those who had no other option for survival. As of now those who took shelter in relief camps are reluctant to leave the relative security of the camps. Most of them continue to fear that once they leave the camps they would be forced to 'reconvert' to Hinduism against their will. It is reported that some persons who were not in the camp were 'reconverted' by force, a process in which many were blinded. It is reported that the reconversion is viewed as a purification process by the VHP.

Even after three weeks of violence, the state administration continues to prevent the media and human rights organizations from accessing the victims. The state administration has enforced a regulatory policy of prior permission for the media and human rights groups to travel into trouble-hit areas or relief camps. In spite of this, the administration insists that the situation has returned to normal.

The state administration, in an affidavit filed in the Supreme Court, has stated that it has taken into custody 421 persons whom the government accuses of being behind the violence. At the same time, credible sources report that the persons cited as accused in these cases are not actually those involved in criminal acts. It is suspected that this is an attempt to save the actual culprits from being identified and prosecuted.

In addition to this, the general public and some of the victims were chased away by the police when they approached the police stations to file complaints. It is

also reported that many complaints that identify criminals were not registered by the police. Such incidents show the complacency of the local police in promoting violence in the state. There is also information provided by noted human rights activists that many non-Hindu institutions and other organizations were denied any form of police protection when they requested it.

It is suspected that many witnesses will fail to turn-up in court, fearing repercussions. This is a genuine fear since India lacks any form of witness protection mechanisms. In any case, it would be difficult for an ordinary person to believe that the police who failed to prevent the violence would protect them on any future occasion.

The violence in Orissa has destroyed the social fabric in the state to such an extent that it will take years of conscious effort by the administration and society to re-establish it. The primary requirement for this is that the state administration impartially investigate the crimes committed during the violence. They must ensure that the accused, if proven guilty, are sentenced to the punishment prescribed by the law for such acts.

The state administration must also ensure that the entire incident and the circumstances that led to such massive violence are properly documented, by the state as well as by the civil society and the media.

# Multinational corporations and human rights in Asia

*Robert J Hanlon, PhD Candidate,  
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The responsibility of business to protect and promote human rights is a rapidly evolving concept in the private sector. Corporate social responsibility (CSR) is now seen as a mechanism to incorporate human rights policy in the business model. While CSR was once an idea adamantly rejected by economists such as Milton Friedman who argued that the only “business of business is business”, ethical corporate values is now seen as making good business sense. Spectacular corporate scandals such as Enron have also helped push the concept forward, together with increasing demands from international organizations and local civil groups that business behave responsibly and incorporate human rights values into its corporate culture.

The United Nations Global Compact, possibly the most influential driver of CSR, argues that human rights are the cornerstone to managing an ethical business. Although the Compact is a voluntary agreement lacking in monitoring and enforcement measures, many human rights advocates see it as a soft law approach to business that will one day lead to a legally binding convention. With over 67,000 multinational corporations employing more than 90 million people, 20 million of whom live in the developing world, these businesses have an enormous sphere of influence. In fact, the 300 largest corporations control 25 per cent of the world’s productive assets, are involved in 70 per cent of world trade and control 90 per cent of global technology.<sup>1</sup> Despite this global reach however, only around 5,500 multinationals have signed up to the Compact. Moreover, while the Compact remains voluntary, the onus for human rights protection and promotion largely remains under the control of business, explaining their poor human rights judgment on numerous occasions. These businesses also lack proper training on issues of human rights. Multinational corporations operating in Asia are no exception, with many companies accused of complicity in direct or indirect human rights violations.

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1. Gabel, Medard and Henry Bruner, *Global Inc.: An atlas of the multinational corporation* (New York: New Press, 2003).

Nonetheless, CSR is fast becoming a corporate norm that needs to be understood by human rights defenders, in order to engage business on this critical issue. This article seeks to point out a few of the conversations occurring within the business community regarding CSR, as well as encourage human rights defenders to take part in the discourse.

### **Corporate social responsibility in Asia**

The World Bank defines corporate social responsibility as “The commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life, in ways that are both good for business and good for development.”<sup>2</sup> While this definition has been largely accepted by the business community, many sceptics fail to see the concept as sustainable. Not only do business managers have difficulty understanding why their company should cut into shareholder profit and engage in community projects that do not guarantee a return in investment, human rights defenders may also see CSR as nothing more than a sophisticated public relations campaign or a mechanism for corporations to cover up their ill doings. In fact, many companies proclaim the CSR mantra but fail to incorporate real change.

Corporations in the extractive industry have been especially notorious for using CSR to rebuild their image after suffering bad press for human rights violations, including Freeport in Indonesia, Unocal in Burma, as well as now defunct Enron in India and Indonesia. All three companies have been accused of complicity in human rights atrocities, which involved tacit support for government troops arbitrarily arresting and gunning down protestors. Stohl et al. argue that Enron is a special example as it remains the only company to date that has had a full Amnesty International and Human Rights Watch report written on its Asian business operations.<sup>3</sup> It is ironic that while Enron was denying the charges, *Fortune Magazine* listed the company as one of the most admired North American businesses in 2001.

Despite the dramatic collapse of Enron, the company had in fact been acting ‘legally’ in the developing countries where it was accused of unethical practices. Many Asian governments rule by law, rather than in accordance with the law; in other words, “The law is used for whatever the ruler’s objectives are; it isn’t an end in itself... the separation of the judiciary from the government makes little sense in such an environment...”

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2. World Bank, *DevComm Sustainability Program*, <http://web.worldbank.org> (accessed 1 October 2008).

3. Stohl et al., ‘A new generation of global corporate social responsibility’ in *The debate over corporate social responsibility*, ed. Steve May, George Cheney and Juliet Roper, 30-44 (New York: Oxford University Press, 2007).

Rather than be independent of government, the judiciary is an arm of it”.<sup>4</sup> In these circumstances, companies align themselves with corrupt and authoritarian regimes and enter into mutually beneficial contracts at the expense of the poor and weaker sections of society. Governments offer attractive tax incentives, land, as well as guarantees on security and resources to multinational corporations, the price of which is paid by exploited workers or displaced communities. In countries such as India, the Philippines, Burma and especially Cambodia, companies stand idly by while state security officers seize land through violent ‘economic development’ campaigns. The region’s underdeveloped legal systems also contribute to endemic corruption; in Indonesia for instance, former President Mohamed Suharto reportedly embezzled up to an estimated USD 35 billion. Elite politics and poorly paid police and judicial officers also play a role.<sup>5</sup>

### **Why should business care about human rights?**

In a 2003 issue of the *Harvard Business Review*, an article discussing the implications for American companies caught up in human rights violations noted that these companies could be held legally liable, as seen in the Unocal case in Burma: “In a potentially devastating footnote for global business, the court ruled that other theories of third party liability beyond aiding and abetting, such as negligence could be used, to link the violations of a state actor to a private corporation.”<sup>6</sup> The article suggests that companies need to clarify their relationships with government officials, develop transparent policies identifying a separation of business activity from government action, as well as monitor the company’s relationship with their business partners. Regrettably, most companies that have human rights policies see the issue as risk management rather than good business ethics. This has been one of the major challenges faced by corporate social responsibility and the United Nations Global Compact—to get businesses to see beyond the legal aspects.

Even when some companies take the so called ethical route and cease operations on account of human rights, companies from countries with little transparency or ethical framework replace them. For instance, John Ruggie notes that when Canadian oil firm Talisman pulled out of Sudan on human rights grounds, firms from India, Malaysia and China dived in displaying far less regard for human rights.

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4. Glen Whelan, ‘Corporate social responsibility in Asia: a Confucian context’ in *The debate over corporate social responsibility*, ed. Steve May, George Cheney and Juliet Roper, 105-118 (New York: Oxford University Press, 2007).

5. Ibid.

6. E. Schrage, ‘Emerging Threat: Human Rights Claims’, *Harvard Business Review* 81, no. 8 (2003): 16-18.

Many multinational corporations have made ethical decisions based on human rights after consumers demanded that business act when governments failed. The most common example is child labour, which is most certainly a profitable practice, but which is now seen as unethical and illegal. The practice of child labour is now heavily monitored by global businesses in countries with weak regulations or enforcement.

Nonetheless, the push for improving human rights, curbing corruption and strengthening legal infrastructure remains a largely legal issue within firms who employ compliance officers to police the business internally. The problem with this is that even the most legally responsible business may be driven to act illegally in markets where the law does not work. The United States' Foreign Corrupt Practices Act (FCPA) highlights this contradiction as it absolutely bans bribery and fraud, but allows for what it calls 'facilitation payments' to grease the wheels of certain bureaucracies that are seen to be inefficient. Regardless of what amount constitutes a legitimate 'facilitation payment', the practice risks undermining the entire anti-corruption movement.

### **Corporate social responsibility: Opportunity with accountability**

Companies must realize that corruption and a firm's risk of being associated with human rights violations in developing states are both consequences of weak legal institutions. Regardless of the FCPA's provisions that allow facilitation payments, corruption remains a high-risk consequence of doing business in developing states. To counter these, corporate social responsibility can be used as a mechanism for development, with businesses aligning themselves with international organizations such as the United Nations. A company can set up a foundation for instance, providing funding to various aid agencies such as the Bill and Melinda Gates Foundation, which has so far committed over USD 16 billion to fight global poverty and disease.<sup>7</sup> The Body Shop, Royal Dutch/Shell, General Electric and Coca-Cola have all developed similar programmes. In 1998, the Body Shop worked with Amnesty International to develop the "Make Your Mark" campaign, still seen as the largest corporate-NGO human rights initiative ever organized. Over 3 million people joined the campaign running in 34 countries, to support human rights defenders around the world. At the same time, many companies that have committed themselves to human rights projects have themselves ironically been involved in human rights violations. Royal Dutch/Shell for instance, has allegedly been involved in funding the Nigerian military.

When corporate social responsibility is used for short-term intentions however, the concept will almost always fail. While a business may see value in short-term projects for public relations purposes, the strategy will backfire when the community realizes

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7. Bill and Melinda Gates Foundation, *Fact sheet*, <http://www.gatesfoundation.org/about/Pages/foundation-fact-sheet.aspx> (accessed 6 October 2008).

that the business is more concerned about brand image than developing a sustainable project. In Cambodia for instance, one company built a school for a poor community as part of its CSR, without taking much note of the surrounding land. Subsequently, the local government seized the land around the school and drove the community out of the area. Not only does this affect the company's bottom-line as the original project is now worthless, but it also affects its corporate social responsibility strategy and reputation as a socially responsible business, particularly if it does not build a new school. The lack of human rights awareness and knowledge possessed by CEOs and business managers can be explained by the lack of human rights education in business schools.<sup>8</sup> In fact, a recently conducted survey of 343 business professors at the top 20 international business schools exposed a fundamental gap in human rights knowledge within business academia.

The debate over corporate social responsibility and the extent to which a company should be involved in capacity building is far from over. As many multinational corporations have clearly violated human rights through unethical behaviour, other companies are learning from their competitors and using CSR frameworks to portray themselves as protecting and promoting human rights. A question mark remains over how genuine their concern is and the sustainability of the concept. This article hopes that by joining the debate, human rights defenders can help to shape the CSR concept in a more effective and just manner.

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8. Stephen Frost and Robert J. Hanlon, 'Elite Business School Perceptions and Behaviour towards Corruption, Human Rights and Corporate Social Responsibility'. Conference paper presented at the Anti-Corruption South Asia Summit: Singapore, 9-11 September 2008.



# **Legal systems used to silence bloggers, suppress freedom of expression**

*Meryam Dabhoiwala*

In the space of three weeks, three cases of bloggers being arrested and charged for incongruous offences relating to public security and defamation in three Asian countries were reported by the Asian Human Rights Commission. On 30 September 2008, the regional rights group documented the arrest and detention of Raja Petra in Malaysia, on September 29 that of Gopalan Nair in Singapore, and on September 12, of Nay Phone Latt in Burma. All three countries are ruled by varying degrees of authoritarianism, to which all three individuals posed threats and dissent.

The freedom of opinion and expression is clearly essential to a healthy democratic society. Precisely for this reason, it is a freedom that is lacking in many countries in the region. In fact, even countries that previously upheld this right are starting to slowly restrict it, such as South Korea, where the new offence of ‘insult in cyberspace’ will soon haunt the country’s vibrant citizen media. Earlier reports from Sri Lanka and Thailand also indicate restrictions on freedoms enjoyed by the media.

Within the last decade, alternative media has flourished in numerous Asian countries, largely through the improved telecommunications infrastructure and the dominance of the internet. With traditional media outlets controlled by governments or corporations supporting governments, alternative media—from community radio stations to online news websites to personal blogs—has become the popular source of not only factual news, but also of policy criticism and unorthodox views. In countries such as Burma, it is also the only way for the international community to learn what is happening inside its closed borders. This was particularly the case during the Saffron Revolution of 2007, as well as in the aftermath of cyclone Nargis in May of this year. Contributing to such alternative media has become a way for ordinary individuals to voice out their grievances against unjust systems; a way to participate in the governance of their society by identifying and critiquing its faults.

Ways of dealing with this organic growth of alternative media varies from country to country in the region, although there is a disturbing trend towards suppression.

Countries such as Malaysia, Singapore and Thailand find themselves in a quandary, having promoted technology as their economic future. Malaysia for instance, has been actively promoting internet access even in remote villages. The ‘side effects’, if you will, of this promotion—the new found freedom of speech and expression not available through conventional media—has unsettled these governments, who are now attempting to introduce new regulations governing alternative media.

In addition to new controls, such as Thailand’s Computer Crime Act of 2007 and South Korea’s requirement that individuals register their national identification numbers with websites before publishing material on them, governments are increasingly resorting to penalizing individuals. Journalists, bloggers, radio/television hosts face charges of defamation, sedition, ‘threat to public order’ and so forth. The cases of the three bloggers reported by the Asian Human Rights Commission are in the same vein.

Raja Petra Kamaruddin, editor of *Malaysia Today*, a blog popular for its political postings and critiques of alleged wrongdoing by public officials, was arrested on September 12 under section 73(1) of the colonial-era Internal Security Act 1960 (ISA) for allegedly being a threat to security, peace and public order. He was arrested one day after a two-week block on his website was lifted. The block, the first official clampdown on a local website, drew much criticism from Malaysian bloggers and journalists, who use their websites and blogs to offer alternative views to those presented by the mainstream media, which are closely affiliated with the ruling political parties.



Petra was given a two-year detention order under section 8(1) of the ISA on September 23, which states that “*If the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof, he may make an order (hereinafter referred to as a detention order) directing that that person be detained for any period not exceeding two years.*”

Those arrested under the ISA have no right to defend themselves, nor are they given fair and open trials. The government also has no obligation to justify or prove the allegations levied against the persons detained under this law. Since the amendments to the ISA in 1989, judicial review has been limited to questions of procedural requirement. Despite the local and international criticism of the law, including concern expressed by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the government has taken no steps to repeal it.

According to his wife Marina Abdullah, who was allowed to see her husband with their two children at the Bukit Aman police headquarters on September 16, Raja Petra spoke very softly and looked weak, pale and had lost weight. He complained to her that he was suffering from lack of sleep because he had been harassed on an hourly basis by officers the night before, who recorded statements from him. Raja Petra's lawyers filed a habeas corpus application at the Kuala Lumpur High Court on September 16, seeking his immediate release.

Petra has been sent to the Kamunting Detention Centre in Perak where he will be detained for two years or more, depending on the discretion of the Home Minister.

On September 12, besides Raja Petra, two others were also arrested under the ISA, who have since been released. Ms Tan Hoon Cheng, a reporter of Sin Chew Daily News was arrested at her home at 8:40pm and taken to the Bandar Perda Police Station in Seberang Jaya where she was detained under section 73(1) of the ISA. She was released on the following day. Ms Teresa Kok, an opposition parliament member was arrested at 11:18pm on her way back from her constituency office in Kuala Lumpur. She was also detained under section 73(1), and was later released on September 19. It is reported that at least 66 individuals are currently detained under the ISA at the Kamunting Detention Centre in Perak.

Gopalan Nair, an American citizen and a former Singaporean lawyer was sentenced to three months imprisonment on September 18, for 'insult' under article 228 of Singapore's criminal code. He was initially arrested on May 31 under article 13D of the Miscellaneous Offences Act. Four days after his arrest, he was charged with 'sedition' for criticizing two judges on his blog. He was released on bail on June 4.



Nair's criticism was directed at judge Belinda Ang Saw Ean, who handled a lawsuit which Prime Minister Lee Hsien Loong and his father, former Prime Minister Lee Kuan Yew, brought against Chee Soon Juan, the secretary general of the Singapore Democratic Party (SDP) and his sister, Siok Chin. Nair wrote on his blog that Ang was "prostituting herself during the entire proceedings, by being nothing more than an employee of Mr Lee Kuan Yew and his son and carrying out their orders".

It is widely accepted that decisions made by judges can be commented upon. In fact, this is a necessity for a healthy democracy. In Singapore however, opinions and expression, particularly those touching upon politics, race and religion, are tightly regulated, and criminal defamation has been widely used to limit criticism. In fact, a week before Nair's

sentence was handed down, the attorney general initiated contempt of court proceedings against the publisher of the Asian edition of the *Wall Street Journal* and two of its editors. According to him, their editorials “impugn the impartiality, integrity and independence of the Singapore judiciary”. Similarly, Mr Chee Soon Juan and his sister were sentenced to jail terms of 12 and 10 days respectively for contempt of court on 3 June 2008.

The case of Burmese blogger Nay Phone Latt is perhaps the most surreal. Unlike Raja Petra and Gopalan Nair, Nay Phone Latt was not arrested on the basis of anything he wrote or published on his blog, but for the contents of his email inbox, which included defaced images of national leaders, writing and cartoons that he received from elsewhere. He has been accused of distributing these ‘in order to upset public tranquility’, although there is no evidence of this. After arresting him at the end of January 2008, the police have further accused him of meeting political activists on his trip to Singapore in December 2007, where he also went to see the ‘Four Fruits’ (Thi Lay Thi) entertainment troupe, whose CDs of performances he copied and passed to others. Needless to say, these facts constitute no crime under domestic law and are irrelevant to the charges made against Nay Phone Latt.



Two further absurdities underline his case: Firstly, the two ‘witnesses’ identified as having been present for the search of Police Major Ye Nyunt on Nay Phone Latt’s premises are not independent. They have appeared in other cases for this police officer and their continued use is obviously a sham to have his people witness events for the sake of records. Secondly, the investigating officer admitted during his testimony to the court that Nay Phone Latt had been interrogated and detained at an army camp, which is a flagrant violation of the law. In fact, his case was also heard in a closed court inside the Insein Prison, rather than in an open court.

The circumstances these three individuals find themselves in are far from unique. A recent report ‘Saffron Revolution imprisoned, law demented’, discusses numerous cases where ordinary Burmese were arrested and charged with absurd offences for doing the most ordinary of things, among them helping with the cyclone relief effort and complaining about the lack of chairs and teaching materials at certain universities. It is thus necessary to consider how the rule of law is being misused in so many Asian countries. None of the three bloggers committed grave criminal offences, and yet faced the wrath of law enforcement agencies in their respective countries, most harshly in the case of Raja Petra and Nay Phone Latt.

The development of legal systems and the establishment of rule of law are primary to a society's economic and social success. International discourse has steadily encouraged the promotion of these concepts, and Asia has dutifully moved in this direction in its post-colonial age. Unfortunately, there has also been a movement towards deliberate perversions of legal systems and the consequent malfunctioning of rule of law institutions, as seen in Burma, Sri Lanka, the Philippines or Cambodia. Among other things, the legal system is the key to the realization and protection of human rights and freedoms. When the system is perverted, not only does it offer no protection, but it becomes a means for corrupt government officials and politicians to further their own ends and punish those who dare to question them. One of the first freedoms to be restricted is inevitably the freedom of opinion and expression, affecting the media and individual members of society. It is particularly troubling when this occurs in democratic countries such as South Korea. Its government's harsh response to the recent mass protests there prompted regional groups to comment that "Asia's benchmark has been lowered".

The numerous groups and persons throughout Asia who continue to speak out against injustice despite their government's brutality and suppression are to be applauded. Without them, the fight for genuine freedom for all peoples would be much further behind than it is. All those concerned with improving human rights and democracy should be listening to them and taking notes on how legal and institutional means are being used to perpetuate injustice.

# Prostitution, trafficking and impunity in India: A human rights perspective

*Vanessa Sanderson, Intern, Asian Human Rights Commission*

Despite the early existence of prostitution in almost all societies, there is little agreement on how it should be addressed. Different governments and policy makers have approached prostitution with varying concepts and ideas, placing themselves along a continuum, one end of which is legalization, and the other criminalization. Some countries have held firmly onto one view, while others have criminalized certain aspects of prostitution, but not all. Proponents of legalization call it the 'oldest profession', while critics argue that it is inherently degrading and damaging and should be made illegal. But what is common to all countries regardless of policy, is that the vast majority of those engaged in prostitution do not want to be there.<sup>1</sup>

Traditionally, policy has done little to tackle the issues surrounding prostitution, factors that go far beyond the simple act of buying and selling sex. Prostitution includes a myriad of complex and varied aspects, including its role in increasing the trafficking of women and children; forced and bonded labour; the high incidence of violence and torture; the low cultural and social status of prostitutes; health risks such as STDs and HIV/AIDS; corruption of police; the growth in sex tourism.

If prostitution is examined from a human rights perspective, it can be seen to violate a number of basic human rights. The United Nations (UN) has affirmed that prostitution is in contradiction with the inherent worth and dignity of being human—the cornerstone of the UN philosophy and subsequent international human rights treaties and conventions. The right to be free from violence; not to be subject to torture, or to cruel, inhuman, or degrading treatment or punishment; equality before the law and to equal protection by the law; freedom of movement; to work in just and favourable conditions with equal pay for equal work; a standard of living adequate for health and well-being—these rights are all contravened through unequal power relations, poverty, corruption and the cultural inequality of men and women found in prostitution.

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1. Coalition Against Trafficking in Women (CATW)

Increased attention on the law and prostitution has been promulgated by the dramatic and harmful rise of trafficking in women and children. It is now widely understood and accepted that trafficking exists in relation to, and because of, the sex industry. Traffickers meet existing demands for sexual services, but also help to create a demand for cheap labour. Countries that have legalized prostitution (Netherlands, Germany, Denmark and Italy) have seen a rapid expansion in their sex industry and a corresponding rise in the number of trafficked women and children. In line with a number of other countries, such as the United Kingdom, under Indian law prostitution itself is not illegal but the owning and running of brothels or profiting from the wages of someone engaged in selling sex are criminal offences. The Immoral Traffic (Prevention) Act (ITPA) 1956 makes the trafficking and sexual exploitation of persons for commercial purposes a punishable offence. It was created in response to the obligations under the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, although it has not proven successful in reducing trafficking or the sexual exploitation of women and children.

To try and inhibit the sex industry and prevent the criminalization of prostitutes, the ITPA Amendment Bill 2006 sought to suppress the demand factor that both creates and maintains prostitution, and to decriminalize the illicit selling of sex. Sweden and the United States have also introduced policy measures seeking similar objectives, but they have gone further: anyone who buys any sexual services, rather than just of trafficked victims, is penalized.

Liberals frequently argue that it is a woman's right to be free to use her body; an expression of the right to sexual freedom. In reality however, prostitution does not entertain values of freedom, dignity or respect, nor is it ever afforded the same benefits and rights as other work. Violence against women is commonplace, but merely seen as an 'occupational hazard'. Prostitutes rarely have the full freedom to dictate what they will and will not do for a customer. All aspects of prostitution are geared towards the comfort and demands of the customer. Even in countries where prostitution has been recognized as a form of work and legalized, the customer is never asked to undergo a sexual health check. Instead, this responsibility lies with the women. Their protection from HIV/AIDS is secondary to the greater enjoyment of men and their 'needs'. For their own protection, countries do not allow people to sell their own organs, so why should the sale of sex be considered different? Do we not worry about protecting prostitutes from life-threatening diseases because they are not as 'worthy' of protection? Prostitution will never just be a job when there are multiple areas of unequal power.

Under patriarchal norms prostitutes are usually social outcasts not worthy of respect, but also seen as essential for the use of men. Some proponents go as far as to suggest that prostitution helps to stem cases of rape and serious sexual harassment. In other words, it is necessary for there to be a group of women whom men can (ab)use, so that the

rest of society can remain safe and untroubled. Such stereotyping of men as feral and uncontrolled is not helpful, and is in fact highly insulting to those men who are able to conduct meaningful and healthy sexual relationships. Moreover, such behaviour by men would not be considered normal; it would be seen to lie in the societal boundaries of prison and mental health care.

Arguments abound over the question of consent or choice. Those keen to dismiss the sexual oppression inherent in prostitution and its close ally trafficking, state that if a woman gives her consent then it is not sexual exploitation. This fails to comprehend the array of factors that account for the well-documented fact that the majority of those in prostitution do not want to be there. Global economic disparities enable traffickers to persuade families to sell their children in hope of a better future, or with false promises of marriage. India is a receiving, sending and transit country for prostitution due to its proximity to Nepal, Bangladesh and Pakistan, and there is a constant illegal movement of people. Human Rights Watch has estimated that there are approximately 15 million prostitutes in India. Adding to this, around 200 girls and women enter into prostitution everyday, 80 per cent of them against their will (CEDPA and PRIDE).<sup>2</sup> Choice becomes immaterial when it is recognized that prostitution is not about, or for, women, but for men.

In India, a woman without a husband is generally considered past her use, particularly if she is no longer a virgin. Women who have been widowed, divorced or forced to leave their family homes due to dysfunction and violence become impoverished social outcasts. Poverty, family desertion and the cultural tradition of Devadasi are the most common routes for those who end up in prostitution. Devadasi is the tradition of selling or dedicating poor low-caste girls to temples, in a religious sanction of prostitution. The practice continues to thrive in Karnataka, Andhra Pradesh and other parts of South India and legitimizes child prostitution—many of these girls, unable to marry, end up as prostitutes in Mumbai and Pune. The whims of men who believe that STDs and AIDs can be cured by having sex with a virgin creates demand that is met with girls as young as seven, not uncommon in red-light districts.

The issue of consent is irrelevant for child prostitutes (raised to 18 years of age under the ITPA Amendment Bill 2006) as children are always seen as the victim. However, Indian police officers—perhaps unaware of the laws in their own country—try and charge child prostitutes with being accomplices, often at the behest of criminal gangs who control the sex industry. Bribes and coercion are commonplace, with police informing brothel owners of upcoming raids. Girls who are arrested are often returned to their traffickers and captors upon being released. This mutually beneficial relationship gives police free

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2. Centre for Development and Population Activities (CEDPA) and Planning Rural-Urban Integrated Development through Education (PRIDE)



reign to demand—and take by force—free sexual services, and to harass prostitutes and take their money. In some instances, girls and women are kept in cages, only released to please a customer. The ease with which procurers and pimps can abuse India's criminal justice system makes the trafficking of women and girls for prostitution far less risky than narcotics or guns, and there are lesser sentences if prosecuted. This speaks volumes about the value put on the life of a woman or girl by the law, which is a reflection of society.

Words such as 'sex worker', 'sex work' and 'management' are all a deliberate attempt to reduce prostitution to a banal economic activity and legitimize the profit gained. The provisions of the ITPA and ITPA Amendment Bill 2006 are important steps in the right direction, but have done little to prevent the routine and brutal ill-treatment that exists within the world of prostitution. For instance, most of the earnings of a prostitute are taken away by brothel keepers and owners. In cases where young girls have been lured by false promises of marriage, 'husbands' will keep all their earnings but write letters to parents to avoid suspicion. Moreover, although the earnings of the commercial sex industry are significant, they are not often identified in the overall profit of an economy. Though the Amendment Bill 2006 goes a long way to criminalize the buying of sex, while decriminalizing the sale—an important recognition that it is the demand factor (men) that drives the sex industry—prostitution is inherently unsafe and dangerous because of the multiple disadvantages faced by women and girls. Stigma, discrimination and local perceptions mean that women forced into prostitution face regular prejudice by police, hospitals, schools and even the judicial system. Regardless of the law, police officers often behave in accordance with their own morals and beliefs of prostitutes, therein effectively encouraging impunity for men who exploit the services of these women. Verbal and physical abuse also prevents women from speaking out or making complaints of rape and harassment to the police. Additionally, police generally refuse to raid brothels or make 'First Information Reports' (FIRs) in these cases, perhaps believing that these women or girls are there by some misguided idea of 'choice'.

India must fight to reduce, rather than promote the commercial sex industry. This can be done by closing the gap between policy and implementation of the ITPA and ITPA Amendment Bill 2006. There must be education in schools on what constitutes a healthy relationship towards sex and women, in order to preserve the dignity and respect of all humans. Husbands and men who exploit the sexual services of women must be made aware of the health implications of their actions. Community programmes must include men, not just target women, and they should be encouraged to ask the prostitutes they visit if they have been trafficked, or why they are there. Hotlines in other countries such as Syria, have proven successful in bringing men into the fight against trafficking and the degradation of women in prostitution. Most importantly, there must be support for those women and children who want to leave prostitution. The government, NGOs and other community organizations must focus on moving resources to providing real alternatives for women and girls in prostitution, so that they too can realize their basic human rights.

# The poetry of Mahmoud Darwish

*The following is a reproduction of the Human Rights and Culture article series of the Asian Human Rights Commission, Issue 19: AHRC-ART-019-2008*

Mahmoud Darwish (15 March 1941-9 August 2008) was born in al-Birwa, Acre, in what is now Western Galilee. The second child of Salim and Houreyyah Darwish, he was taught to read by his grandfather. Darwish published his first book of poetry, *Asafir bila ajniha*, at the age of 19. He subsequently published over 30 volumes of poetry and eight books of prose. He was editor of *Al-Jadid*, *Al-Fajr*, *Shu'un Filistiniyya* and *Al-Karmel* (1981). His first poetry collection to be published, *Leaves of Olives* included the poem 'Identity Card'. He has received numerous awards, and his work has been translated and published in 20 languages.

Darwish left Israel in the early 1970s to study in the USSR and was stripped of Israeli citizenship. He attended the University of Moscow for one year, before moving to Egypt and Lebanon. When he joined the PLO in 1973, he was banned from reentering Israel. In 1995, he returned to attend the funeral of his colleague, Emile Habibi. During the visit, he received a permit from the Israeli authorities to remain in Israel for four days. Darwish was finally allowed to return to live in the West Bank city of Ramallah in 1995. Darwish had a history of heart problems and underwent surgery after a heart attack in 1984. He underwent further surgery in 1998. His last visit to Israel was on 15 July 2007 in order to attend a poetry recital at Mt. Carmel Auditorium. During the meeting he criticized the factional violence between Fatah and Hamas as a "suicide attempt in the streets".

Upon hearing of Darwish's death a friend wrote, "Yes, it was painfully revealing (again) to see the global mainstream media ignore or marginalize the news of the passing away of Mahmoud Darwish, the quintessential poet of anomie and loss, and of the Palestinian cause."

## **I come from there**

I come from there and I have memories  
Born as mortals are, I have a mother  
And a house with many windows,  
I have brothers, friends,  
And a prison cell with a cold window.

Mine is the wave, snatched by sea-gulls,  
 I have my own view,  
 And an extra blade of grass.  
 Mine is the moon at the far edge of the words,  
 And the bounty of birds,  
 And the immortal olive tree.  
 I walked this land before the swords  
 Turned its living body into a laden table.

I come from there. I render the sky unto her mother  
 When the sky weeps for her mother.  
 And I weep to make myself known  
 To a returning cloud.  
 I learnt all the words worthy of the court of blood  
 So that I could break the rule.  
 I learnt all the words and broke them up  
 To make a single word: Homeland...

\* \* \*

### **Under siege**

Here on the slopes of hills, facing the dusk and the cannon of time  
 Close to the gardens of broken shadows,  
 We do what prisoners do,  
 And what the jobless do:  
 We cultivate hope.

A country preparing for dawn. We grow less intelligent  
 For we closely watch the hour of victory:  
 No night in our night lit up by the shelling  
 Our enemies are watchful and light the light for us  
 In the darkness of cellars.

Here there is no 'I'.  
 Here Adam remembers the dust of his clay.

On the verge of death, he says:  
 I have no trace left to lose:  
 Free I am so close to my liberty. My future lies in my own hand.  
 Soon I shall penetrate my life,

I shall be born free and parentless,  
And as my name I shall choose azure letters...

You who stand in the doorway, come in,  
Drink Arabic coffee with us  
And you will sense that you are men like us  
You who stand in the doorways of houses  
Come out of our morningtimes,  
We shall feel reassured to be  
Men like you!

When the planes disappear, the white, white doves  
Fly off and wash the cheeks of heaven  
With unbound wings taking radiance back again, taking possession  
Of the ether and of play. Higher, higher still, the white, white doves  
Fly off. Ah, if only the sky  
Were real [a man passing between two bombs said to me].

Cypresses behind the soldiers, minarets protecting  
The sky from collapse. Behind the hedge of steel  
Soldiers piss—under the watchful eye of a tank—  
And the autumnal day ends its golden wandering in  
A street as wide as a church after Sunday mass...

[To a killer] If you had contemplated the victim's face  
And thought it through, you would have remembered your mother in the  
Gas chamber, you would have been freed from the reason for the rifle  
And you would have changed your mind: this is not the way  
to find one's identity again.

The siege is a waiting period  
Waiting on the tilted ladder in the middle of the storm.

Alone, we are alone as far down as the sediment  
Were it not for the visits of the rainbows.

We have brothers behind this expanse.  
Excellent brothers. They love us. They watch us and weep.  
Then, in secret, they tell each other:  
"Ah! If this siege had been declared..." They do not finish their sentence:  
"Don't abandon us, don't leave us."

Our losses: between two and eight martyrs each day.  
And ten wounded.  
And twenty homes.  
And fifty olive trees...  
Added to this the structural flaw that  
Will arrive at the poem, the play, and the unfinished canvas.

A woman told the cloud: cover my beloved  
For my clothing is drenched with his blood.

If you are not rain, my love  
Be tree  
Sated with fertility, be tree  
If you are not tree, my love  
Be stone  
Saturated with humidity, be stone  
If you are not stone, my love  
Be moon  
In the dream of the beloved woman, be moon  
[So spoke a woman  
to her son at his funeral]

Oh watchmen! Are you not weary  
Of lying in wait for the light in our salt  
And of the incandescence of the rose in our wound  
Are you not weary, oh watchmen?

A little of this absolute and blue infinity  
Would be enough  
To lighten the burden of these times  
And to cleanse the mire of this place.

It is up to the soul to come down from its mount  
And on its silken feet walk  
By my side, hand in hand, like two longtime  
Friends who share the ancient bread  
And the antique glass of wine  
May we walk this road together  
And then our days will take different directions:  
I, beyond nature, which in turn  
Will choose to squat on a high-up rock.

On my rubble the shadow grows green,  
And the wolf is dozing on the skin of my goat  
He dreams as I do, as the angel does  
That life is here... not over there.

In the state of siege, time becomes space  
Transfixed in its eternity  
In the state of siege, space becomes time  
That has missed its yesterday and its tomorrow.

The martyr encircles me every time I live a new day  
And questions me: Where were you? Take every word  
You have given me back to the dictionaries  
And relieve the sleepers from the echo's buzz.

The martyr enlightens me: beyond the expanse  
I did not look  
For the virgins of immortality for I love life  
On earth, amid fig trees and pines,  
But I cannot reach it, and then, too, I took aim at it  
With my last possession: the blood in the body of azure.

The martyr warned me: Do not believe their ululations  
Believe my father when, weeping, he looks at my photograph  
How did we trade roles, my son, how did you precede me.  
I first, I the first one!

The martyr encircles me: my place and my crude furniture are all that I have changed.  
I put a gazelle on my bed,  
And a crescent of moon on my finger  
To appease my sorrow.

The siege will last in order to convince us we must choose an enslavement that does no  
harm, in fullest liberty!

Resisting means assuring oneself of the heart's health,  
The health of the testicles and of your tenacious disease:  
The disease of hope.

And in what remains of the dawn, I walk toward my exterior  
And in what remains of the night, I hear the sound of footsteps inside me.

Greetings to the one who shares with me an attention to  
 The drunkenness of light, the light of the butterfly, in the  
 Blackness of this tunnel!

Greetings to the one who shares my glass with me  
 In the denseness of a night outflanking the two spaces:  
 Greetings to my apparition.

My friends are always preparing a farewell feast for me,  
 A soothing grave in the shade of oak trees  
 A marble epitaph of time  
 And always I anticipate them at the funeral:  
 Who then has died... who?

Writing is a puppy biting nothingness  
 Writing wounds without a trace of blood.

Our cups of coffee. Birds green trees  
 In the blue shade, the sun gambols from one wall  
 To another like a gazelle  
 The water in the clouds has the unlimited shape of what is left to us  
 Of the sky. And other things of suspended memories  
 Reveal that this morning is powerful and splendid,  
 And that we are the guests of eternity.

*(Translated by Marjolijn De Jager )*

\* \* \*

**Darwish was devastating as much in his irony:**

My country is the joy of being in chains  
 A kiss sent in the post.  
 All I want  
 From the country which slaughtered me  
 Is my mother's handkerchief  
 And reasons for a new death.

**As in his despair and weariness:**

Ours is a country of words. Talk, Talk.  
Let me rest my road against a stone.

\* \* \*

**Identity Card**

Record!  
I am an Arab  
And my identity card is number fifty thousand  
I have eight children  
And the ninth is coming after a summer  
Will you be angry?

Record!  
I am an Arab  
Employed with fellow workers at a quarry  
I have eight children  
I get them bread  
Garments and books  
from the rocks...  
I do not supplicate charity at your doors  
Nor do I belittle myself at the footsteps of your chamber  
So will you be angry?

Record!  
I am an Arab  
I have a name without a title  
Patient in a country  
Where people are enraged  
My roots  
Were entrenched before the birth of time  
And before the opening of the eras  
Before the pines, and the olive trees  
And before the grass grew

My father descends from the family of the plow  
Not from a privileged class  
And my grandfather was a farmer



Neither well-bred, nor well-born!  
Teaches me the pride of the sun  
Before teaching me how to read  
And my house is like a watchman's hut  
Made of branches and cane  
Are you satisfied with my status?  
I have a name without a title!

Record!  
I am an Arab  
You have stolen the orchards of my ancestors  
And the land which I cultivated  
Along with my children  
And you left nothing for us  
Except for these rocks...  
So will the State take them  
As it has been said?!

Therefore!  
Record on the top of the first page:  
I do not hate people  
Nor do I encroach  
But if I become hungry  
The usurper's flesh will be my food  
Beware...  
Beware...  
Of my hunger  
And my anger!

\* \* \*

# Hope in the case of Rizana Nafeek

*This is the edited text of a statement issued by the Asian Human Rights Commission:*

*AHRC-STM-258-2008*

To the recipients of communications through the Asian Human Rights Commission network, Rizana Nafeek is a familiar name. The 17-year-old girl from a poor family from a conflict ridden area with a passport indicating her age as 18 arrived in Saudi Arabia as a domestic helper. Within two weeks this young girl was accused of the murder of an infant which she denied, claiming that the death was the result of accidental choking. However, by the time the news reached the outside world she had already been sentenced to death by beheading by a Saudi court and she had only 20 days remaining to make an appeal. The BBC Sinhala Service broadcast this news and expressed the fear that, like four Sri Lankans who had been beheaded earlier, she might face a similar fate.

At this stage the Asian Human Rights Commission wrote twice to the Sri Lankan Foreign Ministry urging intervention to provide legal assistance to the girl. However, it was then learned that it is not the policy of the Sri Lankan Foreign Ministry to provide financial assistance for legal fees. On this basis the Asian Human Rights Commission launched an appeal for raising SR 150,000 which amounted to around USD 40,000 as legal fees for a very competent legal firm, Al Shammary. With the quick responses received from local as well as outside sources the appeal was launched in the nick of time and the death sentence was suspended until the final hearing of the appeal.

Due to the untiring efforts of Al Shammary the case was taken up and the Supreme Council sent the case back to the original court of Dawadami. During these proceedings it was discovered that the person who authenticated Rizana's alleged confession was not a qualified translator and may not even have known the Tamil language properly. As the case proceeded with the likelihood that the court may quash the earlier sentence, the happy news has reached us that the parents of the deceased baby may take steps to forgive Rizana, which according to Saudi law brings the matter to an end.

Mohammad Rasooldeen who has reported this case regularly has published the following article on October 5 (<http://www.arabnews.com/?page=1&section=0&article=115125&d=5&m=10&y=2008>):

**Nafeek case: Father willing to forgive**  
**Md Rasooldeen | Arab News**

RIYADH: The Kingdom's Human Rights Commission will attempt to persuade the mother of an infant who died in the care of a Sri Lankan woman hired as a house cleaner but given nanny duties to cease pursuit of the death penalty.

The father, according to the mediators, has expressed his desire to forgive the maid.

HRC President Turki Al-Sudairy conveyed the latest information in this much-publicized case to Sri Lankan Ambassador Abdul Ageed Mohammed Marleen at a recent meeting at the HRC headquarters in Riyadh.

Al-Sudairy said that HRC officials met the father, Naif Jiziyan Khalaf Al-Otaibi, and he expressed willingness to pardon 20-year-old Rizana Nafeek. However, the mother still claims her private right in the case and is not ready to forgive the maid.

Al-Sudairy told Marleen that the HRC will meet the father and mother together and persuade them to pardon the maid at the next hearing on Nov. 5 before a judicial tribunal headed by Chief Justice Sheikh Abdullah Al-Rosaimi.

The local court in Dawadmi found Nafeek guilty in June 2007. Since then her appeals process has bounced a number of times between the local court and the Supreme Judicial Council via the Cassation Court. Her case is still in this appeals process after the Hong Kong-based Asian Human Rights Commission retained legal representation for Nafeek, with the help of contributions from the Lankan community in Saudi Arabia.

Prior to the first verdict that sentenced her to death, Nafeek did not have any legal representation.

Nafeek allegedly signed a confession, but her lawyers argue that the confession was made under duress and, more importantly, Nafeek had no access to a translator during the initial questioning after she was arrested in 2005. Confessions are typically written in Arabic and signed by fingerprint.

It later came to light that Nafeek was recruited illegally as a minor and trafficked to Saudi Arabia on a forged passport.

Her birth certificate says she was 17 at the time she began working for the Saudi family, but her passport states she was not a minor at the time.

It is illegal to bring in foreign workers to Saudi Arabia under the age of 18. An unscrupulous recruitment agent in Colombo may have committed the forgery, thus violating Sri Lankan law and engaging in the trafficking of minors and racketeering. Nobody has been named a suspect in this crime.

Putting to death a person who committed a crime under the age of 18 would violate Article 37 of the UN Convention of the Rights of the Child that Saudi Arabia voluntarily signed in February 1996.

Marleen said he told Al-Sudairy that whenever there are trials involving Sri Lankan nationals, it is absolutely necessary for Sri Lankan Embassy officials to know the progress of the case in order to avoid “misrepresentations and misgivings.”

Embassy officials should be allowed as observers at the hearings, he added, pointing out that an official representative of the Sri Lankan government was not allowed to be present at Nafeek's hearing at the Dawadmi court.

“An effective mechanism must be in place to ensure that the arrests of Sri Lankan nationals are reported to the embassy on a priority basis so that we can provide consular assistance to the detained (suspect),” Marleen told Arab News.

Meanwhile, in a letter addressed to her parents, Nafeek said that this would be her last Eid in the Kingdom since she would either be released and sent home or executed before Eid 2009.

# **A personal reflection: The ‘Dignity and Justice for Detainees Initiative’**

*Edna Aquino*

Mrs Navanethem Pillay, the newly designated UN High Commissioner for Human Rights launched the Dignity and Justice for Detainees Initiative beginning on 6 October 2008 and as part of the events surrounding this year's commemoration of the 60th anniversary of the Universal Declaration of Human Rights.

At a press conference on October 2, Mrs Pillay said, “In the 21st century, it is high time we took more effective action to reduce this hidden, large-scale violation of human rights,” adding that while no accurate figures exist, “the number of people around the world who are believed to be held in some form of detention that is unjust or inappropriate probably runs into the millions”.

The Initiative aims to increase the pressure on states, parliaments, judiciaries, and other relevant institutions to abolish, or at least reduce, arbitrary and unlawful detention. It also seeks to ensure that conditions in prisons and other places of detention are brought in line with minimum international standards.

“We are not against prisons and detention centres per se—but they should be reserved for those who really deserve to be there according to the extensive, detailed and fundamentally sound international standards governing criminal justice,” she said.

The High Commissioner pointed out that among those that are often illegally detained are people with disabilities, immigrants, refugees and asylum-seekers, as well as journalists, human rights defenders and political activists.

“There are people just like you and me who are sitting in jails across the world today, who should not be there,” said Mrs Pillay. She highlighted in particular the case of Aung San Suu Kyi, the pro-democracy leader and Nobel laureate who has been under house arrest for the past 12 years, noting that she “has in fact served a sentence that far exceeds that served by many hardened criminals”. She also welcomed the decision of the United States Supreme Court in June that the country’s constitution extends to foreigners being held in Guantánamo Bay and that they have the right to challenge their detention in the civilian court system.

“Those detainees in Guantánamo, some of whom have been there for up to six years, have the right to a prompt review of the reasons for their detention. They also have an unequivocal right not to be sent to places where there is a risk of torture,” she stated.

This UN initiative strikes a poignant but hopeful note in me. My human rights awareness, and later, activism, started in 1974 when I joined the families and relatives of a number of detainees who were arrested and detained without any formal charges by the Philippine military during the Marcos regime. My husband, sister, widowed mother and a family friend were taken into custody and eventually detained in a military detention camp following a raid of my mother's house shortly after midnight one day in June 1974. As no charges were filed against them, their detention could be indefinite. The military spared me from being arrested only because of my 8-month old baby. I ended up splitting my time looking after my child, my younger siblings, working to sustain the family and finding ways of getting my detained family released. Efforts of families of detainees to release their loved ones were hardly a collective effort until an opportunity came through the visit of the first Amnesty International mission to the Philippines which prompted the late Senator Jose Diokno to gather a number of us to be interviewed and to present our case to the Amnesty delegation. I clearly remember the role played by members of the Maryknoll Sisters who took the risks in setting up the meetings between us and Senator Diokno at their Convent. The rest is history.

I tend to believe that this initiative by Senator Diokno laid the ground for the eventual establishment of what then became a very robust human rights movement in the Philippines. Sixteen years later, I found myself privileged to be employed by Amnesty International at its London international headquarters where I spent 15 years of my adult life, understanding, internalizing and eventually embracing human rights as a core part of who I am. I hope that this UN Initiative would also be an occasion to pay tribute to the invaluable work of local human rights movements all over the world and that of their international allies like Amnesty International, The Front Line, Human Rights Watch, the Asian Human Rights Commission, to name a few. Without them, the word 'detainee' would not have even figured in today's human rights lexicon.

# **Nepal should stop its plan to deport Tibetans to India**

*Statement issued by the Asian Human Rights Commission: AHRC-STM-241-2008*

The Asian Human Rights Commission (AHRC) is deeply concerned about the government of Nepal's plan to deport all Tibetans living in the country to India, without valid refugee certificates.

The government's plan is already in process. Mr Modraj Dotel, the spokesman of the Ministry of Home Affairs, confirmed to the media on September 11 that the government began screening the refugee status of over 100 Tibetan protesters recently detained and would deport those without proper documents. The government's new plan seems to aim at stopping almost daily protests by the Tibetan exiles in front of the Chinese embassy building in Kathmandu since the Chinese government crack-down on protesters in Tibet in March of this year.

Currently, more than 20,000 Tibetans live in Nepal. They have lived in the country peacefully for a long time, and have no history of causing conflict with the Nepali people even under the now-abolished monarchy with de facto protection. The newly established Democratic Republic of Nepal should not provide less protection to the Tibetan exiles than the monarchy did. Rather, more de facto protection should be provided to the Tibetans in a democratic spirit.

The AHRC is of the opinion that the government's plan is arbitrary by targeting all Tibetans without valid refugee certificates. The AHRC was also informed that the government has stopped issuing refugee identity cards to Tibetan refugees for more than 10 years. The government's move will most likely destroy the livelihood of many Tibetan exiles and force them to become separated from family members who do hold valid refugee documents.

Moreover, the government of Nepal should ensure the freedom of peaceful assembly, which is one of the fundamental human rights, to all persons in the country including Tibetans. The government has legitimate authority to handle protesters according to law in case these protests turn violent. However, according to the information the AHRC received, the Tibetan protesters have been holding peaceful protests as a way to raise their concern about the human rights situation in Tibet. The present government of Nepal,

which is headed by the Communist Party of Nepal (Maoists), should appreciate the rights of the oppressed persons to protest.

The AHRC wants to remind the government that the abolishment of the monarchy and the creation of the Democratic Republic of Nepal is the product of many Nepali people who came out to the streets to protest and call for democracy. Many Nepali people residing abroad could also hold a series of peaceful solidarity protests outside the country to support the people's movement in Nepal. The government should guarantee the freedom of peaceful assembly of the Tibetans in the same way that the Nepali people's freedom of peaceful assembly is protected in many other countries.

The AHRC therefore strongly appeals to the government of Nepal to withdraw its plan to deport Tibetans without valid refugee certificates to India and allow those who wish to stay, to remain in the country. The government should also stop the harsh treatment of Tibetan protesters and guarantee their right to hold peaceful assembly and protests. The Tibetans should not be treated as aliens; in fact they are the people who need more protection by the new government. The victimization of Tibetans should not be allowed under any circumstances in the current political situation.

The AHRC also appeals to the United Nations High Commissioner for Refugees to positively intervene in this matter and encourage the government of Nepal to take humanitarian and democratic approaches towards Tibetan exiles and to guarantee their stay in the country with the freedom of peaceful assembly.





# 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 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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