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Cover photo:

Protesters form a blockade to Govindpur village, June 2011.

Source: Sanjib Das

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We regret to inform you that due to copyright issues, we have removed the article 'Pakistan: Trafficking of women is a fast growing crime' by Naghma Shaikh (Ethics in Action, v5 n4, pp 23-25) from our website, and can no longer be considered its publisher. We apologize for any inconvenience caused.

India: Fictional lines will end human lives

(Edited text of a statement by the Asian Human Rights Commission: AHRC-STM-127-2011, 26 September 2011)

Today, as always, there is a heated debate within the country on the basis of poverty estimations. The Tendhulkar Committee in January 2010 suggested 15 rupees in rural areas and 18 rupees in urban areas per day, based on per capita expenditure at 2004-05 prices, for India's national poverty line. Under high criticism from civil society the Supreme Court of India asked the Committee to revise this meagre amount, which is being more aptly termed as a 'starvation line'. According to the affidavit published on 20 September 2011, it appears that the Commission will revise the poverty line by merely taking into account the 2009-10 data on per capita expenditure, rather than adjusting its methodology or indicators to identify the poor. The poverty line is a rudimentary tool to mitigate poverty and deliver social security services. If its methodology is flawed, so will be its delivery.

According to the Millennium Development Goals (MDGs) report 2011— notwithstanding that none of the data reflect the real situation but in fact tend to underestimate its seriousness—India contributes to a large proportion of the world's poor living on less than USD 1.25 a day. In 1990, 49 percent of South Asia lived on less than USD 1.25 a day, which came down to 39 percent in 2005. When India is excluded from the data however, the figure goes down further to 31 percent. The report observed however, that South Asia showed no meaningful improvement in the prevalence of underweight children in the poorest households between 1995 and 2009. According to the Global Hunger Index, based on the data from 2003-08, the situation of hunger is still higher in India than other South Asian countries.

The various poverty indices reveal the gap between the national and international standards of poverty, as well as the state's political will to eradicate poverty and hunger. The World Development Indicator 2011 published by the World Bank shows that India is the only country that considerably underestimates its poor population. Other countries in South Asia and sub-Saharan Africa that face similar levels of poverty put far more effort into eradicating poverty and hunger, and either have higher estimates of poor through their national poverty line compared to the international line, or have little gap between the two:

Country	Population by national poverty line (%)	Year	Population by international poverty line (%) (poor living on less than 1.25 USD)	Year
India	27.5	2005	41.6	2005
Pakistan	22.3	2006	22.6	2006
Bangladesh	40.0	2005	49.6	2005
Republic of the Congo	75.7	2005	54.1	2005
DR Congo	57.7	2005	59.2	2006
Ethiopia	38.9	2004	39.0	2005
Brazil	21.4	2009	3.8	2009

The international poverty line reflecting income poverty is also challenged. To achieve the MDGs and to assess the country's position globally, multidimensional indicators must be used. While contributing to the high rate of global hunger and the malnutrition of children and mothers, how has the Indian government attempted to mitigate poverty? Its economic growth-oriented policy has done little to bring down the high numbers of poor; the same can be said of the prevalent corruption in distributing food subsidies and other social security programmes. Additionally, the government's intentional failure in identifying its poor population exposes its sheer lack of willingness to eradicate poverty and hunger.

The Acute Multidimensional Poverty Index (MPI) suggests that India's MPI value is 0.296 and its proportion of poor is 55.4 percent. The MPI gives equal value to three indicators—health, education, and standard of living. On the other hand, the BPL survey in Madhya Pradesh discovers that many poor would be excluded from the BPL survey: those categorized as Primitive Tribe Groups, amongst the most vulnerable of tribes for instance, are excluded for owning 2.5 acres or more of land, irrespective of the land's productivity. Woman-headed households, households with disabled persons, or manual labour households can be excluded because they have motorized vehicles or a Kisan (peasant) credit card. Some can be excluded as they were allotted housing under the government housing scheme (IAY).

By underestimating and non-visualizing the poor through fictional methods, the government will surely kill them, as well as perpetuate further poverty and hunger in the future. The international society should recommend more appropriate indicators to the government to achieve the MDGs. The Asian Human Rights Commission urges the Planning Commission to revisit its methodology for the poverty line, and to take civil society demands into account. The civil groups of Madhya Pradesh sent a letter to the Planning Commission, which we reproduce below:

Dear Shri Montak Singh,

I am writing a very small note, because you have no time for poor usually.

What I have learned about Planning Commission is that, this institution do not hear voices of the poor. As these people are considered to be burden on economic growth. But let me assure you that Poverty Line prescribed by Planning Commission will certainly kill hundreds of thousands of people silently.

Hunger and Hungry do not make noise. They live short life silently and die with silence. They are left with no energy to express their own concerns over what India's Planning Commission is doing with them.

I would, anyway, like to request you to think over it again that why you want people to keep Hungry and Malnourished!! What is your feeling and belief behind this? I am of firm understanding that you just don't want society to decide what is poverty and who is poor. You want to decide at your level because you want to justify, wrongly, that economic growth policies have contributed in decreasing poverty, hunger and vulnerability in India. Whereas the truth is just opposite to your efforts.

If you don't agree with me, I would request you to live on this amount for six months and show that survival is possible on this expenditure, if you can do so, at least I would join your concept. Otherwise for the sake of humanity please don't play with the vulnerability of people living with hunger and poverty.

Sincerely,

An Open Letter from the Steering group of the Right to Food Campaign to the Planning Commission of India, forwarded by the Asian Human Rights Commission (AHRC): AHRC-FOL-013-2011, 30 September 2011

Montek Singh Ahluwalia,
Deputy Chairperson,
Planning Commission of India,
Yojana Bhawan,
New Delhi

Dear Mr. Ahluwalia,

INDIA: The affidavit of the Planning Commission in the Supreme Court should be withdrawn

While you were abroad deliberating on global matters, the Planning Commission filed an affidavit in the Supreme Court claiming that the “poverty line of Rs.25 and Rs.32 (rural and urban areas respectively) ensures the adequacy of private expenditure on food, health and education”. The affidavit could not have come at a worse time when food inflation was pushing poor households to the wall even as 60 million tonnes of grain are piling in Food Corporation of India (FCI) godowns implying that the government itself is hoarding grain to increase food prices.

The affidavit filed by the Planning Commission in the Supreme Court skirted the two major issues that were raised by the highest court in the country: why there should be a poverty line that determines the Below the Poverty Line (BPL) “caps” and, a request by the Bench to the Planning Commission to re-consider the poverty line. That the affidavit chose to skirt these two major issues, and chose instead to repeat the stand taken by the Planning Commission in its last affidavit in May 2011 is, we believe, an affront to the poor of this country and also the Supreme Court.

Subsequently, you have gone on defensively to say that the poverty line has no relationship to food subsidy. Yet, all central government allocations for programmes such as Public Food Distribution System (PDS), pensions etc. are made based on these poverty ratios. Further, after drawing a ridiculously low poverty line you suggest caps on the BPL category as well as a 41 percent cap on food subsidy, which is a contradiction in terms. Perhaps you may explain to the lay public that is spending astronomical amounts on food and health care, what this poverty line is then relevant for, if not subsidies for basic needs.

Your public defense of the affidavit being “factually correct” needs to be examined against some other facts such as India being home to the largest number of hungry people, people without the advantage of education, and the highest maternal and infant mortality deaths in the world. It is also “factually correct” that India is ranked 67th out of 88 countries by IFPRI in the Global Hunger Index and that nearly half of India’s children remain undernourished, twice as many as in sub-Saharan Africa. It also needs to be checked against the fact that the Planning Commission itself has admitted that households at this poverty line are getting 20 percent less food than they require as per the government’s own norms. After years of terming the IMF and the World Bank as the sources of all knowledge for how this country’s economy is to be run, you have we believe, misinterpreted the FAO to suggest that the poor need less food than what the Indian government norms state.

Mr. Ahluwalia, perhaps you need to reflect more on the fact that during your stewardship of the Planning Commission, India has fallen further behind neighbouring and poorer (in terms of per capita income) Bangladesh, in terms of most of the human development indicators.

If Rs 25 for rural areas and 32 for urban areas per capita expenditure was “adequate” then it is not clear to us that why Planning Commission members are paid up to one hundred and fifteen times the amount (not counting the perks of free housing and health care and numerous other benefits that is enjoyed by you and members of the Planning Commission).

We believe that this affidavit is a document, no less historically significant than the “*India Shining*” campaign that brought the downfall of a previous regime, because it reflected arrogance and contempt for the poor comparable to the views held by the Planning Commission.

Even as we write to you, over the next twenty four hours, close to 3,000 Indian children will die of malnutrition related illness. The current ‘revolution’ in agriculture has led to nation-wide agrarian distress, and will see 47 farmers committing suicide in India in the next 24 hours. Further, despite your repeated prediction over the last two years on inflation (particularly food inflation) going down, the expertise of the Planning Commission even on that front has been proved wrong. Despite the indisputable intellectual resources at its command the Planning Commission seems to require a reality check; perhaps spending more time in the villages and slums of this country would have achieved that.

The right to food campaign challenges you and all the members of the Planning Commission to live on Rs.25 / Rs.32 a day till such time that you are able to explain to the public in simple words the basis of the statement that this amount is normatively “adequate”. **If it cannot be explained, then the affidavit should be withdrawn or else you should resign.**

The Steering group of the Right to Food Campaign:

Aruna Roy and Nikhil Dey (Mazdoor Kisan Shakti Sangathan, Rajasthan),
Annie Raja (National Federation for Indian Women),
Anuradha Talwar, Gautam Modi and Madhuri Krishnaswamy (New Trade Union Initiative),
Arun Gupta and Radha Holla (Breast Feeding Promotion Network of India),
Arundhati Dhuru and Ulka Mahajan (National Alliance of People’s Movements),

Asha Mishra and Vinod Raina (Bharat Gyan Vigyan Samiti),
 Ashok Bharti (National Conference of Dalit Organizations),
 Colin Gonsalves (Human Rights Law Network),
 G V Ramanjaneyulu (Alliance for Sustainable and Holistic Agriculture),
 Kavita Srivastava and Binayak Sen (People's Union for Civil Liberties),
 Lali Dhakar, Sarawasti Singh, Shilpa Dey and Radha Raghwal (National Forum for Single Women's Rights),
 Mira Shiva and Vandana Prasad (Jan Swasthya Abhiyan),
 Paul Divakar and Asha Kowtal (National Campaign for Dalit Human Rights),
 Prahlad Ray and Anand Malakar (Rashtriya Viklang Manch),
 Subhash Bhatnagar (National Campaign Committee for Unorganized Sector workers),
 Anjali Bharadwaj (SNS),
 V.B Rawat (Former Support group to the Campaign),
 Harsh Mander, Ritu Priya (JNU).

Representatives of Right to Food (State campaigns):

Andhra Pradesh – Veena Shatrugna, M Kodandram and Rama Melkote,
 Assam – Saito Basumaatary and Sunil Kaul,
 Bihar – Rupesh,
 Chhattisgarh – Gangabhai and Sameer Garg,
 Gujarat – Sejal Dand and Sumitra Thakkar,
 Karnataka – Abhay Kumar and Clifton,
 Jharkhand – Balram, Gurjeet Singh and James Herenj,
 Madhya Pradesh – Sachin Jain,
 Maharashtra – Mukta Srivastava and Suresh Sawant,
 Meghalaya – Tarun Bharatiya,
 Nagaland – Chingmak Chang,
 Orissa – Bidyut Mohanty and Raj Kishore Mishra, Vidhya Das, Manas Ranjan,
 Rajasthan – Ashok Khandelwal, Bhanwar Singh and Vijay Lakshmi,
 Tamil Nadu – V Suresh,
 Uttar Pradesh – Arundhati Dhuru and Bindu Singh

With solidarity, from Jeju to Bhubaneswar

Sung-Hee Choi

Dear residents in Jagatsinghpur,

I am a woman activist living in South Korea, the country of the POSCO you oppose. I am currently being jailed in Jeju prison, under the charge of ‘interruption of business’, because of my resistance against the enforcement of the naval base construction in Jeju Island, located in the south of South Korea. Today, 3 July 2011, is the 46th day since my arrest, and 44th day since being restrained.

I accidentally happened to see two of your struggle photos, one of which in the *Korean Times*, 13 June 2011, had the following caption underneath it:

‘Anti POSCO action in India: A villager sprays water to relieve children lying with other villagers along the entry point to prevent policemen and officials from entering their area at Jagatsinghpur district, about 140 kilometers (87 miles) east of eastern Bhubaneswar, India, Saturday. The villagers have been protesting against turning their farmland into an industrial developed area for a USD 12 billion steel plant of South Korean conglomerate POSCO (AP-Yonhap).’

The situation of Gangjeong village, Jeju Island, where I, along with many others, wanted to prevent the naval base construction, is very much like yours. The Gangjeong villagers who have fought for four years to save their village are keeping vigil day and night against any sudden crackdown by the navy and construction companies (Samsung and Daerim etc.).

Their fight is not just about land grabbing--the ecology system is equally important, and the construction of the naval base will destroy the entire ecosystem. If trucks come, they block them with their bodies and if ships come, they resist them by swimming to them. Recently, a movie critic named Yang Yoon-Mo had a total of 76 days’ fast, including 60 days’ prison fast, against the naval base. The Gangjeong village itself is an ecology-excellent village while the Gangjeong Sea is inhabited by UNESCO-protected soft corals.

Ms Sung-Hee Choi is a peace activist for Gangjung village, Jeju and an advisor to the South Korea to Global Network against Weapons and Nuclear Power in Space. She was finally released from prison on 17 August 2011.

The naval base construction site in the Gangjeong village is the habitat of endangered species such as red feet crabs and small round frogs. But the navy has expropriated more than 51 percent of the villagers' land and threatened them so that they could not get the deposited money as indemnity.

The Jeju naval base would make Jeju, 'the Peace Island' into 'the War Island', and would destroy peace in northeast Asia, and farther afield, which is why not just Gangjeong villagers, but many people are opposing it.

I could not help but feel great sadness and anger over the fact that a big South Korean conglomerate is to rob and destroy your lands. POSCO is one of the big, infamous corporations, along with Samsung, which has oppressed its workers, with its no-labor union policy.

Since POSCO would destroy not only the environment of your hometown, but also your right to life, your struggle is 'legitimate self-defense'. Just as my action should not be called 'interruption of business', but 'legitimate self-defense'.

Expressing my anger at POSCO and my apology to you, I also send you my warm comradeship, respect, condolence and encouragement. Your courage and urgency inspire me.

Wholeheartedly supporting your struggle to save your hometown and your right to live without reckless developmentalism and neo-liberalism, I pray for the success of your struggle.

In solidarity,
Sung-Hee Choi

3 July 2011

The fight against POSCO in Orissa

Pradeep Baisakh

The Orissa High Court's interim order on 9 September 2011 came as a damper for the inhabitants of Dhinkia, Nuagaon and Gadkujang panchayats of Jagatsingpur district, many of whom are vehemently opposing the POSCO steel-cum-captive power plant in the area. Hearing two public interest petitions filed by Nisakar Kahtua and other affected people from the area, the court dismissed their request to order a stay on the acquisition of forest land by the state. It has however, ordered a stay on the acquisition of private land to be transferred to the company.

Prashant Paikray, spokesperson of POSCO Pratirodha Sangram Samiti (PPSS), a group spearheading the anti-POSCO movement for more than six years now, said, "We are happy that the Court has stayed the private land acquisition. It has however denied the diversion of the forest land acquisition under the Forest Rights Act. But this is only an interim order, the hearing will continue. We are hopeful that the final order will go in favour of the people."

The district administration is currently involved in a mindless tree felling exercise as part of its forest land acquisition. A writ petition has been filed by some local social activists mentioning that "50,000 trees have been cut by the government. It is ascertained from the government website that more than 500,000 different trees would be cut down in the area for the proposed steel plant."

While the copy of the interim order is yet to become public, the court ruling is bewildering as environmentalists and forest rights activists say there is no basis for the diversion of forest land and tree felling, which violate India's Forest Rights Act. Moreover, there is no Memorandum of Understanding (MoU) between POSCO and the state government at present. The MoU on the project expired on 22 June 2010 and is yet to be renewed. Prior to discussing the illegalities involved in the POSCO project, we can first

Pradeep Baisakh is a freelance journalist based in Orissa, India. He has written extensively on transparency law, right to work and food, environment issues, industrialisation and development, women, and tribal rights. His writing can be found at: <http://pradeepbaisakh.blogspot.com/> . He can be contacted through email: 2006pradeep@gmail.com.

(NB: Much of the matter used in this article is reproduced from the author's earlier articles written on the topic.)

throw some light on the project itself and examine the sequence of events regarding the government's role and the people's struggle.

The project

On 22 June 2005 Pohang Steel Company (POSCO), a large South Korean corporation, signed a Memorandum of Understanding with the government of Orissa. This understanding outlined POSCO's proposal to invest USD 12 billion (around 54 thousand crore Indian rupees) and build a 12 Million Tonne Per Annum (MTPA) integrated steel plant, captive port and mines in the Erasama block of Jagatsingpur district. This is tipped as the highest FDI to India. The project requires 4004 acres of land, of which about 2900 acres are forest land; the rest is private. In addition to this, land is also to be provided for railways, road expansion and mine development. This MoU was valid for five years, and stands expired now. A renewed MoU is yet to be signed as both parties are at loggerheads on certain issues. Three panchayats will be affected by the steel and power plant project, namely Dhinkia, Nuagaon and Gadakujang under Kujanga Tahsil.

Clearance for the project

After the signing of the MoU, the state government recommended the central government to consider the POSCO project as a Special Economic Zone (SEZ), for Environment Impact Assessment (EIA) and Coastal Regulation Zone (CRZ) clearances in mid 2006. The project got initial 'in principle' forest and environmental clearances with conditions from the Ministry of Environment and Forests (MoEF) in June 2007. The matter was taken to the Supreme Court, which eventually gave clearance for the forest diversion proposal and ordered the state government to refer the matter to the MoEF, which would take a decision according to the law. With Jairam Ramesh taking charge of the MoEF, and his proactive role in appointing expert committees to inquire into alleged violations of forest and other related laws by the state government, people's hope of obtaining justice was rekindled, only to be dashed later.

On 2 May 2011, the ministry gave final environmental and forest clearance to the project,¹ much to people's surprise, as both the expert committees appointed by the Minister, the FRA review committee (headed by Dr N C Saxena) and POSCO review Committee (headed by Ms Meena Gupta), recommended the withdrawal of the project from the area.

1. <http://www.environmentportal.in/files/Posco-final-orders-02052011.pdf>

Unique people's struggle

The pertinent land in the Jagatsingpur district is considered to be very fertile for the cultivation of betel, paddy and fish. P Sainath, the Rural Affairs Editor of *The Hindu*, a popular English daily newspaper told me in an interview that, "On one betel farm, over one-tenth of an acre earns a profit of 1.5-2 lakh² rupees in a year. This is actually a stunning return while comparing with the input cost." This is one of the reasons why many people and political parties oppose the project's establishment there.

Since the signing of the MoU, people of the area have been opposing the project. The POSCO Pratirodha Sangam Samiti (PPSS) was conceptualized to lead the anti-project movement. Several rallies, protest marches and demonstrations were held by PPSS in the area and around, including the capital of Orissa, as well as the national capital. In due course a pro-POSCO group was established, the United Action Committee (UAC), which supported the project with some conditions. Some say that this group was strategically formed by ruling party leaders (Biju Janata Dal: BJD) in the area and does not in fact have any mass base. Confrontations between the two groups have occurred at different points of time. One member of the anti-POSCO group was allegedly killed by the project supporters. Police had gone to the area and unleashed repressive action against the protesting people. Some people, mostly from Gadkujang and Nuagaon panchayats supported the project, while people from Dthinkia panchayat stood firm against it. The leader of PPSS, Abhay Sahoo, was arrested by state police in October 2008 and a number of criminal cases filed against him, with charges of murder, kidnapping, assault and so forth. Criminal cases have in fact been filed against many of the PPSS supporters. As a result, they are unable to leave their villages, even today. In a bizarre human rights violation, while Abhay Sahoo was in the hospital during his arrest (he was ailing then), he was secured to the bed with chains like a dreadful criminal. Following such excesses, human rights activists raised an outcry of gross violations in the area. Support poured in from across the nation and beyond, and the anti-POSCO movement took an international shape. In condemnation of the arrest of Abhay Sahoo and other PPSS activists, a rally was organized from Mandi House to Parliament Street in New Delhi in November 2008. A 'Banar Sena', a protesting wing of children, was formed where even children resolved to fight against the project.

In order to thwart any entry of police and POSCO officials to the area, people raised a barricade at the strategic Balitutha, the entry point to the three panchayats. But in May 2010, police used tear gas, rubber bullets and lathi charges to drive people away

2. One lakh is equal to one tenth of a million.

from there. Some houses at the entry point were allegedly burnt by the police. Finally in August 2010, the environment minister ordered the state government to stop the land acquisition until a final decision was taken on the matter.

Recent standoff and protest

Armed with the MoEF's final clearance on 2 May 2011, the state administration, without any loss of opportunity, resumed acquiring land from May 18 in the villages of Polang, Noliasahi and Bhuyanpal, where most people were persuaded or threatened to hand over their land in lieu of compensation. Betel vines, the major source of livelihood of the people in the area, were pulled down by the administration. Those opposing the acquisition process were harassed by armed police. Basu Behera, the Panchayat Samiti member of Gadkujang panchayat and vice president of PPSS was injured and bleeding due to the police attack.

The police faced unprecedented resistance when it attempted to enter the Govindpur village in Dhinkia panchayat as its next target at the beginning of June 2011, considered to be the bastion of the PPSS. Twenty platoons of armed police were deployed to tackle the situation, with both the District Magistrate Narayan Jena and Superintendent of Police Debadutta Singh present to supervise. More than 3000 people formed a human chain and lay on the ground at the village entry point. Said one protester, Manjulata Dalai of Govindpur village, "If the land goes to the company, we will die anyway. It is better to die now in pursuit of protecting our land than dying after losing the land."

Children's participation

In a novel—and controversial—method, about 600 children formed the frontal barricade and prostrated on the hot sand in the month of June, preventing entry to their villages. The state administration cried foul over the use of children in the struggle, claiming it to be a violation of child rights. After the brutality of May 2010, when more than 100



Priyanka Dalia (right) *Source: Pradeep Baisakh*



Children forming a barricade *Source: Sanjib Das*

people were injured, including several women, the villagers felt they had little option but to take the children's help in protecting their homeland. Priyanka Dalai, a fifth-grade student taking part in the protest said, "We will not leave our land. We will protect it at any cost."

The district administration had gone on record saying they could use force to acquire the land. The situation looked very precarious where the people were lying on the ground under the scorching sun, while the police was ready just 500 metres away. Imposition of section 144 of the Criminal Procedure Code and repeated warnings by the district Superintendent of Police to leave the land fell on deaf ears; people did not budge. Dr B D Sharma, former Commissioner for Scheduled Castes and Scheduled Tribes, told the media during his visit to the area that the determination of the people not to leave their land is unshakable. "People are protesting here for the last six years. Even then if the administration resorts to using force leading to any loss of life, it would amount to genocide, for which the administration will be fully responsible."

Children's participation in the struggle was defended by Abhay Sahoo: "Since the armed police are confronting the democratically protesting people, so the children are compelled to participate in the protest dharanas. I will say it is their higher consciousness that they have come forward to the rescue of their parents and to safeguard their livelihood."

The National Commission for Protection of Child Rights (NCPCR) visited the area and recommended the state government to vacate the schools occupied by the police and appealed all concerned to create an ambience so that children's right to education and well being is protected.

Almost all the political parties barring the ruling BJD, thronged to the area extending support to the protesting masses and decried any use of force on the people. CPI, CPI (M), Congress, BJP and other small parties sent their representatives who sat alongside the people and thwarted any possible police action. Well known social activists such as Medha Patkar, Magsaysay award winner Aruna Roy, Swami Agnivesh, Vandana Shiva, trade union leader Gurudas Dasgupta, retired Justice of Bombay High Court Kolshe Patil and Magsaysay award winner Sandeep Pande also sat in solidarity with the people.

The demonstrations continue in Bhubaneswar and New Delhi. The 24-by-7 presence of media, most importantly the electronic media, has allowed for live telecasts and a close watch over the war like situation. Children prostrating under the hot sun caught the attention of people across the globe and sympathy flowed in support of those determined to sacrifice everything for their land. People from 64 countries, in a signed petition, have urged the Chief Minister not to use force and to hold a dialogue with the people. While the government temporarily made a retreat from Govindpur, construction work and tree felling continues unabated in Nuagaon and Gadkujang.

Illegality of the project

There are several legal issues involved in the proposed POSCO project, which are discussed below. Not only are people's voices being suppressed, but several laws and procedures have been bent to favour the company.

Palli Sabha resolutions ignored

The first and foremost issue relates to the Palli Sabha³ resolutions of the Dhinkia (held on 21st February 2011) and Gobindpur (23rd February 2011) villages under Dhinkia village panchayat, which dismissed the diversion of forest land to the project. These resolutions were sent to the MoEF by the PPSS, with 1632 out of 3445 voter signatures in Dhinkia village and 1265 of 1907 in Gobindpur village. The state government however, submitted to the ministry that the resolutions were only signed by 69 and 64 voters respectively, which lacks the quorum needed in accordance with the Forest Rights Act.⁴ Said PPSS spokesperson Prashant Paikray,

We had faxed only two pages of the resolution to MoEF but the complete copy was sent to both the MoEF and state government by registered post. The state government has lied on the number of signatures backing the resolutions. Still unfortunate is that Jairam Ramesh also accepted it unquestioned. The facts have now been presented before the High Court in a petition.

Apart from the ground of quorum, the state government also has raised the issue of the power of the Sarpanch, elected head of a Gram Panchayat, to convene a Palli Sabha and the validity of the resolutions passed. According to the government, "Two resolutions purported to have been passed by the Palli Sabha are not available in the book (recorded by the gram panchayat secretary and signed by the Sarpanch) and are therefore fake ones." The MoEF also purportedly analyzed various provisions of the Orissa Gram Panchayat Act and the Forest Rights Act, and came to the conclusion that the resolutions are not valid documents. Many legal experts do not agree to the conclusion of the state and central governments. In fact, the Orissa Chief Secretary's order of 4 February 2009 states that when the Forest Rights Committee in a village wishes to present its findings, there is no need to wait for any government decision to convene any Palli Sabha; only the ward member and Sarpanch have to be impressed upon the need to hold the Palli Sabha.

3. Palli Sabha is the assembly of adults of a revenue village, synonymous to the generic term Gram Sabha or village panchayat, which is the lowest elected body in India.

4. The quorum under the Forest Rights Act requires the presence of two third of the total voters in the village in the Palli Sabha meeting.

In the records relating to the aforesaid resolutions, the Panchayat secretary writes that he could have not attended the meeting as there is no government order for him to attend, although in reality he has violated provisions regarding attendance. To suit its agenda, the state government has suspended Sarpanch Sisir Mohapatra for having ‘over-stepped his jurisdiction’. Legal expert Prasant Jena opines, “Suspension of a democratically elected Sarpanch in such instance amounts to misuse of power by the state government.” Social activist Aruna Roy demanded his immediate reinstatement as “he has not violated any provisions of the Constitution.”

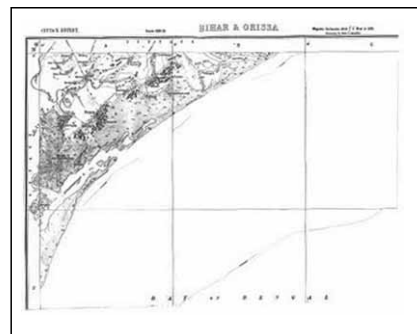
It is clearly visible that the substantive aspects of the FRA have been relegated by the procedural aspects. What is of substance here is that the majority of people in the area oppose the diversion of forest land for the POSCO project. In fact, the current acquisition of forest land by the state government for the purpose of diversion has also not been backed by any Palli Sabha resolution, which is mandatory under section 4(5) of the law and the MoEF guidelines of 30 July 2009. This legal violation is now being contested in the High Court. The state government however, is of the opinion that since there are no tribals and other traditional forest dwellers (OTFDs; non-tribals dependent on forests) in the area, no such resolutions are needed.

Earlier in February 2010, Palli Sabhas in Dhinkia, Govindpur and Nuagaon villages were convened on the direction of the District Collector and passed resolutions rejecting the forest diversion proposals for the project. All these resolutions were overlooked however, while final clearance was granted to the project by the MoEF.

Claims under FRA not settled

The state government’s claim that there are no tribals and other traditional forest dwellers (OTFDs) in the area is incorrect. The 2001 census itself shows there are 23 tribals in Polang village under Kujang Tehsil, which is one of the villages covered under the proposed project.

Under the definition, people living in the area and dependent on the forest for three generations or 75 years prior to 13 December 2005 will be considered to be OTFDs. However, the state government claims that people living there could not have been dependent for 75 years on the ‘forest’ as only in October 1961 was it declared as forest under the Indian Forest Act. In other words, with the forest only legally existing for 49-50 years, there is no possibility of anyone

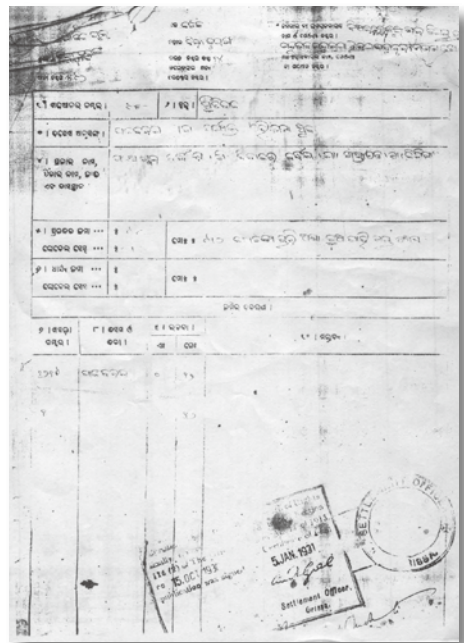
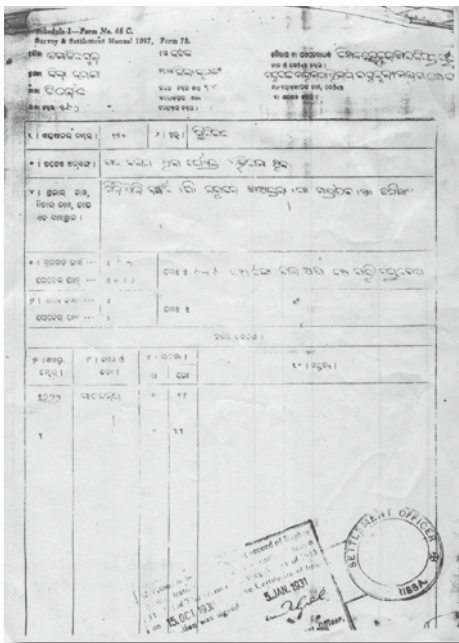


Survey of India map showing existence of forest in Dhinkia, Nuagaon, Gada Kujang in 1928-29

falling under the category of OTFDs. Contrary to the government’s claim however, the Survey of India map shows that as early as 1928-29 the area was forest land under Cuttack district (Jagatsingpur district was part of former undivided Cuttack district). Furthermore, Madhu Sarin, a renowned expert on forest issues, disparages the linkage of period of notification of forest to claims under the FRA. “Under the FRA, the definition of forest includes all kinds of forest, such as unclassified forests, reserved forests, existing or deemed forest, wild sanctuaries, national parks and so on. It does not say that it should be notified in such and such a year. If that was the case then large parts of Orissa are not forest land as large chunks of land in scheduled areas were notified as reserved and protected areas after independence.”

Records show existence of traditional forest dwellers

In fact in August 2010, Dr N C Saxena, Chairperson of the FRA monitoring committee constituted by the MoEF and MoTA (Ministry of Tribal Affairs), wrote to Jairam Ramesh and mentioned some ten documents providing the proof of existence of OTFDs in the area. One such document is the record of rights of a Mr Giridhari Bardhan of Govindpur village from 1927, collected from the survey and settlement manual:



Saxena wrote in no uncertain terms that there were violations of the Forest Rights Act in the proposed POSCO area by the state government. Similarly, the majority of the POSCO review committee members held that there were gross violations of

environmental laws, fabrication of evidence, perpetuation of forest rights abuses and suppressing facts relating to the Coastal Regulation Zone. They even recommended prosecution of the authorities who had violated the provisions of the Forest Rights Act (FRA) and other environmental laws.

Ignoring all evidence of such violations, the Environment Minister approved the project. Not surprisingly, four days later, the Minister said on record that he is forced to regularize illegalities many a time!

Prime Minister's pet project

Implementation of the POSCO project is being directly monitored by Prime Minister Dr Manmohan Singh's office (PMO), as it constitutes the highest Foreign Direct Investment in the country. In an April 2007 meeting with Orissa Chief Minister Naveen Patnaik, Manmohan Singh asked the state government to expedite the process of land acquisition for the project. In August 2010, Patnaik met Manmohan Singh and Jairam Ramesh to seek their support for the POSCO project, where Singh assured the Chief Minister 'to hasten the project'. This was despite the MoEF expert committee's adverse report on the project. On many other occasions the PMO has played a key role in facilitating speedy implementation of the project. Environmentalist Ashish Kothari, also a member of the Dr Saxena committee, said "The PMO is directly interested in this project. There is an inside kind of news that India is probably interested in entering into a nuclear deal with South Korea. Taking advantage of this, the South Korean government is backing its own corporate." It is therefore not surprising that the project got forest and environmental clearance despite adverse reports by both expert committees.

According to journalist and food policy analyst Devinder Sharma, "It seems that Jairam Ramesh's heart was for stopping POSCO given the kind of committees he set up to study violations of the law in the proposed area. But he was under pressure from the PMO, which is bent on selling out our national resources to companies in the name of development."

Conclusion

While the September 9 court order has come in handy for the government to continue acquiring land and felling trees in areas where it is facing less resistance, the stay on private land acquisition has given it a jolt. Even though the project has obtained the final clearance from the MoEF, the matter relating to the source of mining is not settled. The High Court has previously set aside the state government's recommendation to provide a licence to POSCO for the Khandahar iron ore mines in Sundergarh district. Moreover, the MoU is yet to be renewed after it expired on 22 June 2010.

In the meantime, Paikray of PPSS says, “Already a petition is lying in the National Green Tribunal challenging the violation of environment norms in our area.” Abhay Sahoo asserts “We will fight till the project is shifted out of our area”. With both the central and state governments putting their weight behind the project and giving clearances left and right, how far the people can resist is to be witnessed. One can only hope that the violence unleashed by the state in Kalinga Nagar, the steel hub of Orissa, in January 2006 where 14 people were shot dead by the police, is not repeated here.

References:

Das, Prafulla (2010), “Bulldozer Regime”, *Frontline*, 5-18 June

Pattnaik, Sandeep (2010), *Chronology of anti-POSCO movement*

Baisakh, Pradeep (2011), “The Orissa government wants to bring Bt Cotton to Kalahandi”, *Tehelka*, 18 July (Link: http://www.tehelka.com/story_main50.asp?filename=Ws180711The_Orissa.asp)

Baisakh, Pradeep (2011), “Clearing Forests and People in Orissa”, *Counter Punch*, 15 July (Link: <http://counterpunch.org/pradeep07152011.html>)

Baisakh, Pradeep (2011), “War Zone in Proposed POSCO Project Area”, *Counter Currents*, 14 July (Link: <http://www.countercurrents.org/baisakh140711.htm>)

Baisakh, Pradeep (2011), “Children’s participation in protest is due to their higher consciousness: Abhay Sahoo”, *Orissa Diary*, 24 June (Link: <http://orissadiary.com/inerview/abhaysahoo.asp>)

Baisakh, Pradeep (2011), “Prevent possible genocide in proposed POSCO area of Orissa: Dr B D Sharma”, *Orissa Diary*, 15 June (Link: <http://www.orissadiary.com/CurrentNews.asp?id=27257>)

Baisakh, Pradeep (2011), “Vedanta and POSCO: A tale of two projects”, *Infochange India*, April (Link: <http://infochangeindia.org/201104158758/Environment/Features/Vedanta-and-Posco-A-tale-of-two-projects.html>)

Website of Ministry of Environment and Forest (MoEF) (Link: <http://moef.nic.in/index.php>)

A civil society perspective of Aceh's sharia regulation

Yunita

The granting of special status and autonomy to the Indonesian province of Aceh in accordance with law no. 44 of 1999 and law no. 18 of 2001, has given it four basic privileges: (1) Organizing religious life under the implementation of sharia law; (2) Organizing education; (3) Organizing custom (*adat*); and, (4) Giving ulema (Islamic clergy) the role in decision-making on regional matters. Based¹ on the above two laws, Aceh's legislative has the authority to regulate *qanun*².

The establishment of local regulations based on sharia law surprised the international community however, particularly as certain such provisions violate human rights, for instance those relating to corporal punishment. While it is important to advocate against any laws violating human rights principles, it is also necessary to take into account the views from Aceh society, before determining the method of advocacy.

This article is based on personal reflection and interviews with three prominent civil society representatives, who are all familiar with the situation in Aceh and are actively involved in the advocacy regarding sharia law. They are Bustami Arifin, an Acehnese staff member of the commission for disappeared and victims of violence, Jakarta (Kontras Jakarta), legal advocacy and human rights division; Hendra Fadli, the coordinator of Kontras Aceh; and Zulfikar, the head of the civil and political division of Aceh Legal Aid Institute (LBH Aceh).

Society's view regarding sharia law

Generally, there is no rejection from the society regarding the imposition of sharia law in Aceh, for various reasons. Firstly, there is the view that historically, sharia law has always been accepted and prevalent in Aceh, although according to Bustami Arifin, society rejects the provisions regarding corporal punishment and restrictions against women, and

1. The policy paper of Indonesia's national commission on violence against women, "The analysis of Aceh's district regulation", <http://www.komnasperempuan.or.id/wp-content/uploads/2009/01/analisis-terhadap-qanun-nangroe-aceh-darussalam.pdf>, page 1.

2. Article 1(8) of law no. 18 of 2001 defines *qanun* as a local regulation to implement Aceh's special autonomy law.

wants more humane punishment. Another reason for the lack of rejection, as given by Zulfikar, notes that the society does not truly understand the sharia regulations. Since the government conducted little public awareness and education regarding these regulations, people continue to be ignorant of the content. The imposition of sharia law is also a sensitive issue, which is another reason for the lack of rejection.

In summary, the lack of social rejection should not be taken as acceptance of sharia law, but instead, the reasons behind the absence of rejection should be further reviewed.

Problems regarding the implementation of sharia law

Aceh is facing several problems relating to the implementation of sharia law. One of the key issues is regarding the substance of the law, which is contradictory to other Indonesian laws, including international conventions that the country has ratified. Corporal punishment and restrictions against women are the main culprits here, which violate the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, and the International Covenant on Civil and Political Rights. These are all higher laws in the country which cannot be violated, and yet several articles of sharia law do so. Arifin and Fadli thus see sharia law as ‘an old product’ that was imposed without following progressive human rights and international legal principles.

The absence of procedural law for the sharia regulations has resulted in their obscure and inconsistent implementation, according to Fadli. One example of this is the functioning of the *wilayahul hisbah*, the sharia police responsible for enforcing sharia law. While undertaking their duty, Fadli stated that the *wilayahul hisbah* sometimes refer to qanun, according to which they are the regional supervisor of sharia law, and do not have the authority of an investigator to arrest, detain, or seize, and sometimes they refer to criminal procedure law as a civil service official, who is thus granted special authority as an investigator.

The implementation of the sharia regulations is a crucial problem, with inconsistent application to different Aceh residents, as well as involving the practice of punishment without trial by residents themselves. According to Zulfikar, the majority of those given corporal punishment under sharia law are the poor and ordinary residents, the ‘vulnerable community’. This is because ordinary folk know little about the law and their rights, while the court system does not do its part to inform them of their right to legal aid, right to appeal and so forth. This is further compounded by the fact that the process of sharia trial is very fast, with the perpetrator being brought to trial and sentenced to punishment on the same day. Wealthy and influential persons meanwhile, can easily make use of loopholes in the law through their lawyers.

There is agreement that the legislative process is the reason behind the problems facing sharia law. The regulations were created in a rush, precluding vibrant discussion, academic analysis, public participation and socialization. The central government offered sharia law in 2003 in an attempt to reduce the ongoing conflict in Aceh, but it was done without adequate preparation, resulting in today's deficiencies.

Impact of sharia law on society

According to Bustami Arifin, society has become scared and grudging in response to the imposition of sharia law. People are scared to violate any provisions of the law, including for instance, the night curfew for women. The sentencing of corporal punishment would be shameful not only to the perpetrator, but also his family, thus resulting in a grudge. Fadli and Zulfikar also note that the imposition of sharia law encourages violence in the name of sharia. For instance, people themselves punish alleged perpetrators without any trial process and before they are brought to the wilayatul hisbah and are sentenced to any legal punishment. There are various forms of such social punishment, including being beaten and flushed by sewage water. In other words, sharia law encourages social conflict in two ways—first by allowing—and thus encouraging—violence, and second, by giving perpetrators and their families a reason for holding grudges.

Ulema's response

There are two opposing views regarding the ulema in Aceh. Arifin sees the ulema as generally open minded and willing to have a dialogue with civil society. As long as civil society's arguments are responsible and contribute to the betterment of a Muslim society, they will be accepted. Contrary to this opinion, Fadli and Zulfikar state that the ulema are the strongest opposition to any revision of the sharia regulations. Moreover, they consider human rights as a "western product", and would see any revision of the regulations according to human rights principles as anti-sharia.

In these circumstances, it would be useful perhaps to have a discussion with the ulema regarding the substance of human rights and convince them of its value to Indonesian society.

The government's effort to solve this problem

There was agreement by all three speakers that the government is not active enough to solve the problems of sharia law in Aceh. It tends to ignore any human rights violations that occur from the implementation of sharia law. In fact, when one international NGO put forward that the regulations violation human rights principles, the government denied it and simply noted that it must be respected as a specialty of Aceh.

Civil society's effort to solve this problem

Fadli stated that he had submitted some case findings, the reports from Kontras, a working group on the issue, and from the UN Committee Against Torture to the competent parties. However, the government's lack of human rights understanding and sensitivity made it resistant to the civil society findings.

In 2009, the Aceh government had proposed a draft of the jinayah regulation (*qanun jinayah: sharia-based penal code*). This regulation ruled 10-400 lashes as punishment for certain crimes: *jarimah* (an act prohibited by islamic law), drinking alcohol, gambling, *khalwat* (seclusion), *ikhtilath* (intimacy or mixing), adultery, sexual harassment, rape, *qadzaf* (accusing adultery without being able to present four witnesses as proof), *liwath* (homosexuality). It also added stoning as a punishment for adultery.³ In response, a civil society coalition was set up to eliminate or modify these provisions through a legislative drafting mechanism. Finally however, the jinayah regulation was not imposed; no legal action was therefore taken. The coalition stopped its work at this time, instead of continuing to advocate for the revision of other sharia regulation articles that violate human rights.

Four solutions have been suggested to deal with the sharia issue: evaluation, reaching an agreement, capacity building and change of provisions that violate human rights. According to Zulfikar, evaluation is the best way to solve the problem; the sharia regulation should be harmonized with other Indonesian and international laws, which would further ensure there is no imbalance between the theory and its application. In order for this to happen, requires reaching an agreement by all the interested parties. Fadli advocates the need for a conducive dialogue among all competent parties about the limitations of the sharia regulations and the understanding of human rights, with the purpose of coming to an agreement. Fadli noted that without such an agreement, mere legal action cannot solve the problem. As far as legal action is concerned, Bustami opines that the house of representative of Aceh (*DPRA*) must change the sharia articles that are not in accordance with human rights principles. The government must also provide capacity building opportunities to the *wilayatul hisbah* and open their mechanism to the public.

3. The Wahid Institute Monthly Report on Religious Issue, edition on 23 October 2009, "qanun jinayah NAD disahkan DPRA", http://www.wahidinstitute.org/files/_docs/23.%20monthly%20xxiii.pdf

Monthly stigma: The practice of 'chhaupadi' in Nepal

Juliette Thipauid-Rebaud

It's a small house, a hut or a cowshed, a little away from the houses of Ruga village, in the heart of Mugu, one of Nepal's most remote districts hidden in the Himalayas. The roof is so low that an adult struggles to stand up; the entrance is so small that the sunlight barely finds its way in. In summer the rain pierces the roof and the snakes crawl inside. In winter, the cold is cutting.

The tradition of *chhaupadi* isolation continues unabated in Western Nepal. In the local language, "*chhau*" refers to menstruation, "*padi*" to women. This practice stems from the belief that when she has her periods, the woman is "impure" and could "pollute" and "contaminate" the household by remaining there during her menstruations. So, once a month, during the entire length of their menstruation, women are banished to the *chhaupadi goth*, which they can only leave once their periods are over. Women who have just given birth are equally considered "untouchable" and go and join their fellow *chhaupadis* with their newborn babies in the *goth* for 11 days. Sometimes the *goths* welcoming the *chhaupadis* are former cowsheds. Often, they still shelter cattle and the women have to coexist with the buffaloes, separated from them only by a summary partition.

Practices and taboos surrounding menstruation vary according to the region, the community, the village, and are not confined to Nepal. In the strictest observance of *chhaupadi*, women are prevented from looking at the sun, interacting with males and cattle, drinking dairy products and dealing with their daily chores. Scholars Kandel, Bhandari, and Lamichanne have listed the scourges threatening the community and the family of women who do not abide by the tradition: "she could become sick or die; her bones could break; she could become infertile; others could fall ill or even die. She will become sexually dangerous and harm would come to any partners' genitals and person could not have sex and could be harmful to family members, village etc if the seclusion is broken." Furthermore, if they "touch the fruit trees, the fruits will fall before they are ripe or the fruits will be dry; if they fetch water, the well will dry up; if the cattle are fed or milked by *Chhaupadi*, blood will come out of their teats instead of milk." ¹

1. "Chhue, Chhaupadi and Chueekula Pratha" – Menstrual Sheds: Examples of Discriminatory Practices against Women in the Mid- and Far-Western Regions of Nepal: Considering Women as "Impure" or "Unclean" During Menstruation and Post-Partum Periods, *Nirmal Kandel, MBBS, M.A, Amir Raj Bhandari, LLB, MBA, Jaya Lamichanne, MA*, available at : <http://drnirmal.tripod.com/Journal1.pdf>

Families who break the tradition are pushed away from their village or community. Last year the story of Gagan B K made headlines because he decided his wife would stay home during her period, aware of the dangers that face women confined to the goth. The couple was ostracized by his community and banished from all social gatherings and celebrations.² Gagan's parents also took part in the ostracization, refusing to eat the food prepared by his wife. In August 2011, the newspapers reported the story of a 19-year-old girl forced to deliver her baby in the cowshed, and thereafter severely beaten up with nettles by other women because she stepped out of the *goth* only a few hours after giving birth.

Even if all communities do not force isolation upon their menstruating women, the discrimination and prejudice against them remains strong, even in Nepal's capital city, Kathmandu. During a study conducted in Nepalese schools by Wateraid in 2009, only 11 percent of the respondents declared not practicing any form of restriction or exclusion during menstruation.³ For instance, during their period women are often banned from the kitchen and eat separately. Mothers may instruct their daughters not to walk near a temple or not to look at herself in the mirror to avoid bad omens.

The impact of chhaupadi on women's health is obviously devastating. Five days a month, the women are confined to a dark, dirty room without nutritious food in sufficient quantity. Every year, newspapers report stories of women raped, killed by wild animals, bitten by snakes or dead of cold during their stay in the *goth*. The consequences are even more extreme for women who have to give birth and stay there for days with their newborn. In 2008, there were 281 deaths due to complications during the delivery for 100,000 live births in Nepal. This figure, which according to numerous experts is probably largely underestimated, represents a considerable progress up from a maternal mortality rate of 539 for 100,000 recorded in 1996; yet it remains one of the highest in Asia. The neonatal mortality rate (during the 28 days following the birth) reaches 32 for 1000 live births and a lot of newborns succumb to pneumonia or diarrhea after living their first days in a cowshed.⁴ The lack of appropriate care during delivery to prevent post-natal difficulties also partly accounts for the high prevalence of uterine prolapse, which has made the lives of 600,000 Nepalese women hellish, according to the United Nations Population Funds data.⁵

2. 'Whole family ostracized for shunning Chhaupadi', Ekantipur, 3 February 2010, Doti District, available online at: <http://www.ekantipur.com/2010/02/03/national/whole-family-ostracised-for-shunning-chhaupadi/307614.html>

3. http://www.wateraid.org/documents/plugin_documents/wa_nep_mhm_rep_march2009.pdf

4. 'NEPAL: Maternal, neonatal mortality "too high"', 3 February 2009, IRIN, <http://irinnews.org/Report.aspx?ReportId=82714>

5. 'Fallen Wombs, Broken Lives: Responding to Uterine Prolapse in Nepal', 3 August 2009, United Nations Populations Fund, <http://www.unfpa.org/public/News/pid/3282>

In addition to the sanitary consequences, such discriminatory traditions slow down women's emancipation process, which Nepal has embarked upon with tremendous difficulties since the end of the conflict. On one hand, the girls' education, key to the empowerment of Nepalese women, suffers from their absence five days a month, including during exams. On the other hand, by stigmatizing women's natural cycle as impure, society locks them up through numerous restrictions controlling their bodies and restraining the scope of their engagement in the community. Their potential for action, participation and innovation is constrained through this stigma and shame. Locking up women's bodies is also an attempt to lock up their minds.

The end of discrimination against women and the dismantling of the patriarchal society have counted among the main demands of the Maoist insurgency, and have fuelled women's participation in the guerilla movement. While the conflict has at least allowed ending discrimination against women to be included in the political agenda, the ground progress has been slow. In 2005 the Supreme Court declared the practice of chhaupadi as illegal, and the government designed a protocol aiming at its eradication in 2009. Nevertheless, the main part of the awareness-raising and educational work lies upon the shoulder of women's NGOs.

We should keep in mind that through its adhesion to the Convention on the Elimination of All Forms of Discrimination against Women, Nepal is mandated to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". If pointing fingers at the lack of education and awareness fuelling the chhaupadi system and demanding a "change of mindset" constitute the easy part, designing a comprehensive strategy of modification of those models of conducts and the structure of society in order to undermine the practice's root causes has proven a much bigger challenge.

Nepal: Dialogue with the Prime Minister must make accountability and justice its cornerstone

Open letter issued to Ban Ki-Moon, Secretary General of the United Nations by the Asian Human Rights Commission: 20 September 2011, AHRC-OLT-010-2011

The Honourable Ban Ki-Moon
Secretary General
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United Nations
New York, NY 10017
UNITED STATES

Via fax: 1-212-963-2155

Your Excellency,

The Asian Human Rights Commission (AHRC) understands that you will be meeting the recently elected Prime Minister of Nepal, Mr Baburam Bhattarai, during the 66th session of the General Assembly, and calls on you to urge him to take all necessary measures to ensure significant advances concerning human rights and accountability during your bilateral dialogue.

The international community, through the United Nations in particular, has invested significantly in Nepal since the end of the country's conflict in 2006, to ensure stability, peace, disarmament, and the prevention of further violence and human rights abuses. The OHCHR's office in Nepal has played a key role in monitoring and upholding human rights in the country, in many cases assisting in preventing grave abuses.

However, Nepal's political parties have failed to do their part to live up to the international community's trust, and, even more crucially, that of the people of Nepal, who have mandated these officials with the task of forming a new, democratic Nepal, based on human rights, security and the rule of law. It is therefore vital that Prime Minister Bhattarai place the issue of human rights and accountability at the heart of his government's priorities, and we sincerely hope that you will raise this pressing need with him in person.

Since the end of the conflict in 2006, successive governments have repeatedly pledged that they would deliver justice to the thousands of conflict victims and their families and that the fight against impunity would be made a priority. However, five years after the end of the conflict, not a single perpetrator of human rights violations has been arrested and justice has been repeatedly delayed, frustrated and undermined. In numerous cases, the perpetrators have been named, and in some instances cases have been filed, but the governments have failed to take the required action, leaving perpetrators on both sides of the conflict to enjoy complete impunity. This impunity has enabled the perpetrators to become active political leaders, constituent assembly members, ministers or to be sent to lucrative missions abroad. Emblematically, in 2009, a soldier against whom an arrest warrant was pending for having participated in the torture to death of a schoolgirl during the conflict, was found to be serving in a UN Peacekeeping mission in Chad. In a welcomed move, the UN repatriated him to Nepal, but he is yet to appear before the court. This year, a Maoist Constituent Assembly member accused of ordering the killing of a businessman in 2008 became Minister.

Prime Minister Bhattarai was elected on promises to bring the peace process to its conclusion and to ensure the adoption of a new constitution. Both tasks are commendable but both must be based on internationally accepted human rights law and standards. While impunity prevails, it will be impossible to ensure lasting peace and the effective implementation of a constitution that enshrines people's rights and freedoms.

The AHRC has serious concerns about the new government's intentions concerning human rights and accountability. In August, the United Communist Party of Nepal-Maoists made public its proposal for the peace, constitution and integration of the two armies, which also provides that the UCPN is committed to withdrawing court cases filed against party members. In an agreement signed on August 25 between Mr Bhattarai's party, the UCPN-Maoists, and the United Democratic Madhesi Front, prior to the Prime Minister's election, both parties agreed to withdraw cases pending against members of the Maoist party, and the Madhesi, Janajati, Tharuhat, Dalit, and Pichadabarga movements. On September 14, the Attorney General announced that his offices are preparing the withdrawal of criminal cases filed against Maoist leaders during the conflict. However, the government has failed to give sufficient guarantees that this withdrawal will be restricted to cases of a strictly political nature, raising human rights groups' concern that the withdrawal will likely include cases of rape, killings, torture and enforced disappearances.

Numerous human rights organizations, national and international, have raised serious concerns about the government's repeated attempts to provide blanket amnesty to the perpetrators of gross human rights violations. The Asian Human Rights Commission is of the opinion that the withdrawal of criminal cases amounts to the granting of amnesty for gross human rights violations committed during the conflict. This is inconsistent with

Nepal's human rights obligations under the International Covenant on Civil and Political Rights and denies victims their fundamental right to legal redress. This decision would signify the institutionalization of impunity and undermine the future prospects for the establishment of a democratic, stable Nepal based on human rights.

Among the cases likely to be withdrawn is a high-profile case of murder dating back to 1998, for which a Maoist Constituent Assembly member was convicted and sentenced to life imprisonment in 2010, a sentence that was upheld by the Supreme Court. However, the perpetrator has been allowed to remain active in the country's Constituent Assembly since then.

History has shown that peace is fragile and ephemeral where justice and human rights are sacrificed for immediate political gain. As you have yourself written, Your Excellency, peace without dignity, justice or hope for a better future is a false peace, a truce at gunpoint.

Case withdrawal deprives the people of Nepal of their ownership of the peace process by encroaching on their legitimate aspirations for redress and justice. Since the end of the conflict, mass withdrawals of cases have been conducted by successive governments, granting amnesties to their supporters. This direct political interference into the course of justice has weakened the rule of law and the justice system in Nepal, and fuelled impunity. Impunity has in turn nourished instability and insecurity in the country. It is time to bring this trend to an end and to put the Nepal peace process on track by addressing the issues of accountability and justice.

A report released earlier this year by the Office of the High Commissioner for Human Rights in Nepal reads, "The national legal framework and practice in relation to case withdrawals does not appear to be consistent with an international consensus that impunity for serious violations of human rights and international humanitarian law is impermissible under international law. It leaves the Government of Nepal in breach of its international legal obligations under several treaties, including the ICCPR."

The AHRC urges you to convey this important message during your dialogue with the Prime Minister of Nepal, and secure guarantees from the Prime Minister that he will oversee a process to ensure justice and accountability, as well as effective legal redress for victims, in line with international standards. The AHRC further urges you to specifically demand guarantees that all the human rights cases filed will be thoroughly investigated, that the perpetrators will be prosecuted and that all court orders will be duly implemented as promptly as possible.

Yours sincerely,

Wong Kai Shing
Executive Director
Asian Human Rights Commission, Hong Kong

CC.

1. Representative of the Office of the High Commissioner for Human Rights in Nepal, NEPAL
2. President of the United Nations General Assembly
2. United Nations Special Rapporteur on the independence of judges and lawyers, SWITZERLAND
3. UN Resident and Humanitarian Coordinator for Nepal, NEPAL

Philippines: A medical practice in which the poor are likely to die

Danilo Reyes

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The common phrase that the poor suffers the most, in all aspects of life, is not difficult to comprehend. It is near impossible however, to grasp the depth of their daily suffering; it is not like any experimental exposure, where a person can immerse himself in a situation in order to get a feel of it, knowing full well that he can simply step out of it when it becomes too much for him.

Admittedly, my knowledge of how the disadvantaged suffer from the poor state of the medical practice in the Philippines is limited to my recent experience, as well as that of my family and relatives. While I could articulate others' experiences, it would be in broader and more abstract terms.

If you are poor in the Philippines, and you have no political connection, and are not known to the medical service provider, and if the latter thinks you have no education, you are likely to die.

Recently, I took my family for a holiday to my wife's hometown, a remote village in the southern part of the Philippines. After having been away for over two years, I thought our travel would be a good experience for our two children, the eldest of whom is five, and the youngest, two. The latter was born in Hong Kong and has not been seen by our relatives since his birth.

A few days after we arrived, both children fell ill. The eldest had fever and was vomiting, while the youngest had loose bowels. In the village there are no taxis; there is an ambulance service but there is no way to contact them. In an emergency, the villagers take the patients, even those who might be dying, to the hospital by themselves--if not on foot, on a public bus or passenger jeep at the highway. These means of transport are only available about ten to twenty minutes walking distance from the house where we were staying.

It was high noon as I carried my eldest and my wife our youngest, to the highway to go to the hospital which was almost an hour away from us. After waiting for the passenger jeep to arrive, we then had to wait until it was full, as the driver was reluctant to leave without a full vehicle.

Try to imagine the scene inside the jeep: I was carrying a plastic bag for my daughter to vomit in; and my wife, who was carrying our boy, was making sure the contents of his low quality, malfunctioning diaper (the best available) did not spill out of his pants. We waited in agony and despair for the jeep to leave for the nearby town where the hospital is.

Finally we were there. We immediately went into the emergency section of the provincial hospital. Here, I saw an ambulance parked by the door and wondered how it might be possible to contact them, not seeing any contact sign or instructions. At that time, I did not bother to find out; I had my two children with me right at the door to the emergency room. It had taken an hour and now we were just as worried and clueless as no one was telling us what to do.

Along the hallway, a hospital staff (probably a nurse), who did not bother introducing herself, asked us why we were there. She didn't stop to talk to us and we had to walk along with her. I had always assumed that in an emergency room where the lives of patients are at stake you do not waste time. Was it necessary for this nurse to ask such an obvious question? Apparently it was.

In an emergency situation, the first duty of the hospital staff is to ascertain the immediate situation of the patient. Without making any such inquiries however, the nurse arrogantly asked why we did not bring our sick children earlier. Before I was able to answer, she told us that if we wanted to have our children attended to by a doctor, we would have to either submit them for admission or just go away.

She then arrogantly demanded to know why we were unaware that the doctors at the provincial hospital only serve patients half day every Saturday. Thus, even if we admitted our children they would not be attended to by a doctor until one or two days later.

It was only after I told the hospital staff that we lived in Hong Kong and were staying at a nearby town, that she took the time to explain to us properly how we could get treatment at the hospital; something that should have been part of her normal duties. My siblings and friends had told me that we were only likely to be accommodated by government employees including hospital staff, if they thought we had money, or were professionals, and most importantly, if you arrived at the hospital in a private car.

In this instance all we had was this arrogant woman to deal with. There was no apparent system or mechanism. There was no one dealing with newly arriving patients, their conditions being an emergency or otherwise. I did not see any instructions on what the newly arriving patient should do to get registered and treated; that they are only open half days on Saturdays; that a patient could be admitted without being examined by a doctor; that patients have to wait until the doctors are available. There were no instructions, only posters from the health department on general public announcements.

When I realized this, what came to mind was not me and my two sick children, but how terribly the poor and ordinary person might suffer daily when they seek treatment from that government hospital in an emergency. Our case was vastly different. At least I had an idea of how to deal with government employees and we, at least, could also afford to go to a private doctor and hospital.

I was told how patients were refused treatment in health centres and hospitals for very petty reasons. My sister-in-law told me a story about an indigenous child, who came down with a relative from a far flung village in the mountains, sent away by the village health worker because he did not carry proof that he was a resident there. The patient, whose foot was badly and painfully swollen, was refused treatment by the health centre.

In the remote and far flung villages, villagers do not bother securing referral letters or documents to prove they are residents of that village. Most villagers know who lives in their village regardless of how far a neighbour's house is from another. Indigenous people prefer to treat their patients on their own because, firstly, they have very little experience of getting treatment from medical services, and secondly, hospitalization and medication means you need a lot of money, which they do not have.

Even if you can afford to pay or are covered by health insurance in private hospitals, doctors and hospital staff make money from you in their own way. Unlike in Hong Kong, the doctor's fee when you go to private doctors and hospitals in the Philippines is only for the consultation; medicine is not included. The doctor would prescribe a medicine for you to buy at the private pharmacies outside. The prescription of medicine is where the doctors get money or commission from medical representatives, who are selling medicines. These persons have their own way of checking at pharmacies which doctors prescribed what medicine.

Thus, when my wife and I fell sick a few days later, the medicines prescribed by a doctor at a private hospital—which might have been cheaper if they were of a generic brand—were very expensive. Doctors at private clinics usually ask patients what they do for a living (which clearly has nothing to do with your sickness) before prescribing medicines. The medicine that the patient would get depends on the patient's response; and the doctor's judgment as to whether the person can afford it or not.

At the private hospital where my wife and I went, I overheard a female patient sitting next to me attempt to admit herself for treatment. The nurse refused to register her because she had no money to pay, and also could not produce a document showing the bus company would cover her hospital expenses (she was a victim of a bus accident). The patient had not been admitted even when we left the hospital.

Doctors are subject to laws as well as medical rules and regulations. To refuse treatment to needy patients is illegal; however, hospitals and health centres get away with it by not putting them on record in the first place. They have no liability or responsibility for any patient when they do not have any records of them.

Reincarnation

Tarnima Warda Andalib (Tama)

I wish, I could have a renaissance once again
In such a world,
Where, all remonstrations would be listened and resolved
Where, all martyrs would be truly honored
Where, life would have no exaggeration!
And souls would have an uncompromised serenity!

I wonder,
Humans would have truly understood the importance of the truth
The truth, that roams around us
The truth, that touches us every single moment, every day
The truth, that we ignore for our indifferences!

Yes, I wish I could have a reincarnation
When, I could find this ludicrous world, full of love
When, all predetermined trivial parts of so-called life would be vanished
When, all sensitivity would be valued and humans would behave like humans
When, all sacred powers would rise
And, all individual virtuosos will be honored in thy fields;
I wish, I could have a rebirth just one more time
When, no innocent will be burnt to death
Where, no life would be eliminated in pain
Where, no fatality would take place in any street, in any home
Where, every tear drop will be counted
And all bloodshed will find justice

Tama is a Bangladeshi poet whose first poetry collection, *One Lonely Planeteer* (English) was published in 2010 by Gyan Bitoroni Publishers. Her second collection “*Makorshar Jal*” (Bangla: *The Spider Web*) will be published this year by Shikor Publishers. ‘Reincarnation’ was conceived while the poet was having an evening tea conversation with two Dhaka University political science professors, Dr Dil Rowshan Zinnat Ara Nazneen (her mother) and Mr Md Shariful Islam, on the horrendous human rights situation in Bangladesh. Inspired by Mr Islam, the poet records her wholehearted thanks and well wishes to both these political scientists.

Where human beings will flourish by fulfilling their rights
Where all dreams and wishes would fly high
And will be free from all atrocities;
I wish, I could die this last time
After several previous deaths,
And come back once again
With all green and blue
With all rain and purity
With all mellifluous affability;
I wonder, I could have the ultimate return
When, there will be only peace in the air
Of my Motherland, Bangladesh along with the whole world
When, life would have a meaning to go on
When, all the hearts of the world would unite as one
When, love would sparkle like a never ending star
In the sky;
Oh! Yes, I wish I could have the final resurrection
Find only humanity and yes, only real human beings in a new incipient world.

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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.

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