

# Ethics in Action

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# Ethics in Action



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**Cover photo:**

Children suffering from malnutrition in Khandwa district,  
Madhya Pradesh, India. Source: Spandan Samaj Seva Samiti,  
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# The politics of starvation in Bangladesh

*Rater Zonaki*

The problems of poverty and starvation in Bangladesh are well known to the rest of the world. The Center for Policy Dialogue, a Dhaka-based nongovernmental organization, recently released a report naming the country the 18th hungriest nation in the world. Quoting this NGO, local media have reported that 28.2 million people are still considered “ultra poor”, while 40 per cent of the country’s 150 million people are below the poverty level.

Another report claims that around 77 per cent of the population living in coastal, submerged and island areas are still ultra poor. The International Food Policy Research Institute based in Washington, in its “Global Hunger Index: The Challenge of Hunger 2008,” also lists Bangladesh as the 18th hungriest nation among 88 countries.

The government of Bangladesh has initiated a few programs to combat the challenge of food security in the country. To improve the socioeconomic situation of people living below the poverty level, the authorities operate various programs providing food for work, food for vulnerable groups and allowances for the elderly and widows.

A large number of NGOs under the direct supervision of local government institutions are involved in implementing these programs. There are controversial claims as to the success and failure of these programs from the government and the civil society groups respectively.

For example, the elected representatives of a union council, the smallest grassroots-level unit of local government, are officially responsible for preparing lists of eligible candidates for the vulnerable group feeding program. After assessing their possessions and income, the authorities give eligible people a card entitling them to 15 kilograms of free rice per month.

All these programs have given the government a way to show the world how concerned it is for the welfare of the people. On the other hand, the abuse of bureaucratic and political power, as well as corruption—an integral part of the Bangladeshi system—have seriously narrowed the avenues for deserving people to benefit from the ongoing socioeconomic protection programs.

The Bangladeshi media have been publishing reports on the manipulation of the system, the abuse of political power and corruption; however, the authorities have little interest in stopping these ongoing practices.

One recent example described in a daily newspaper exposes the level of manipulation that is taking place. Two sons of ruling party politician Azizul Islam, Sujan and Mamun, were given vulnerable group feeding cards in Atgharia Upazilla in Pabna district. The family owns farmland in the area, along with farming and husking machines, a huge village home, an electronics business and various other establishments in the locality. The family of Azizul Islam, who is president of the Awami League's local Ward Committee, is known as a rich family in the area.

Responding to journalists' questions regarding his eligibility for the vulnerable group feeding card, Sujan said, "We have contributed a lot to the party; we deserve it!"

In contrast, Sakhina Begum, an elderly widow who has lost her eyesight and has been living in another poor man's house as a homeless person in the neighborhood of Azizul Islam, did not qualify for any of the government programs. The media reports claim there are many such incidents in the area.

The chairman of the Debottor union council expressed his helplessness by saying, "We have to sign the papers prepared by leaders of the Awami League and approved by the member of Parliament of the local constituency." However, the leaders who were involved in making up the lists for the feeding program refused to comment on their controversial role. Local member of Parliament, Shasur Rahman Sharif, reportedly claimed that the representatives of the local government did the original job and he just signed the paper as a formality.

In the midst of this 'blame game', newspapers are reporting the manipulation and corruption of elected representatives and ruling party leaders across the country. According to the reports, people who require government aid have to pay the ruling party leaders to ensure they are not dropped from the list. The truly needy, who cannot afford to pay bribes, are caught in this circle of abuse of power and corruption.

This situation provides the answer to the question as to why Bangladesh is included among the 20 hungriest nations of the world. The poor literally starve to death, losing their share to the politically hungry people, who never realize they are starving to death morally. The poverty and starvation of the poor end with their individual deaths, while the politicians voraciously eat up more than their share of all that is available in Bangladesh. Why?

The government remains deaf and dumb to the situation. No authority is considering the rationality or fairness of the system. The ruling party leaders, including the prime minister, remain silent, thus sending a clear message that they are in power only to allow their 'own people' to get all the benefits from the state.

The ruling party politicians feel they deserve their big meals, while the starving poor do not. Nobody is ashamed of stealing the food of the dying people. In fact, the politicians might prefer to maintain the level of starvation in the country to keep up the flow of foreign aid, and the subsequent corruption it engenders.

In the face of this continuing political consumption, the leadership needs to explain just what the Awami League meant by 'change' in its election manifesto, "Charter for Change". So far there is no evidence of any attempt to stop these ongoing practices.



# **‘Emergency relief’ fails to prevent child starvation in India**

*Hunger Alert desk, Asian Human Rights Commission*

Between June-December 2008, at least 43 children died of malnutrition related illnesses in Khalwa block, Khandwa district, Madhya Pradesh, India. Far from being concerned, the state government blames the deaths on ‘diseases’ and ‘parental ignorance’, due to some of the parents belonging to a tribal community. According to a local human rights group, Spandan Samaj Seva Samiti (Spandan), the families of the deceased children continue to struggle for survival on a daily basis. Not only is there no improvement in their living conditions, but the emergency relief measures initiated by the government after the death of 27 children between August and September were recently withdrawn.

## **August 2008**

Four-year-old Chhotu died suffering from diarrhoea, malnutrition and weight loss in the village of Mohalkhari. Chhotu’s father Suraj has two acres of non-irrigated farmland, which is unable to provide adequate nutritious food for his family. His six-month-old son Sagar was suffering from malnutrition and a respiratory infection.

Due to the illness of his two children, Suraj could not cultivate his land and was forced to borrow 2000 rupees (USD 40) at an interest of 50 per cent for their treatment. The family earlier had an Antyodaya Anna Yojana (AAY) card—a public food distribution card for the poorest, entitling holders to subsidized rice and wheat—that was replaced with a Below the Poverty Line (BPL) card, even though their economic status has not improved. As a result, while the family is getting poorer, they have to pay more than before—under the AAY card—to buy goods from the ration shop. Furthermore, Suraj’s family borrowed grain to get by, which they have to pay back double.

Three other children besides Chhotu and Sagar suffered from a lack of sufficient and nutritious food and clean water in Mohalkhari; four of them died in August.

## **September**

Following Chhotu’s death in August, Suraj was faced with the death of his younger son in September. In the neighboring village of Medhapani, Shivram lost his 18-

month-old daughter Shivani. The infant suffered from a fever, respiratory infection and malnourishment. A migrant and a landless farm labourer, Shivram finds it difficult to provide food for his family on a daily basis. As he has no ration card, he had to borrow 1000 rupees (USD 20) to buy grain.

Vishram is another landless labourer with no ration or job cards. His three-year-old son Ravishanker wasted away with fever and diarrhoea before his death.

According to a World Health Organization (WHO) report 'Management of the Child with a Serious Infection or Severe Malnutrition' (2000), the symptoms exhibited by malnourished children include oedema, airway and breathing difficulties, dehydration from diarrhoea, infections of the ear, throat and skin, pneumonia, and mouth ulcers. In the space of four months—August–November—and across 13 villages in the Khalwa block of Khandwa district alone, 23 children died of malnutrition with symptoms such as fever, diarrhoea, respiratory infection, blisters and swelling.

### **'Emergency measures'**

After the malnutrition deaths were publically reported, Spandan noted that administrative authorities began providing relief for children in those villages. Hundreds of children were brought to the public Nutrition Rehabilitation Centres (NRCs; Bal Shakti Kendras) and the Shaktiman project was introduced to 299 Child Care Centres (Anganwadi centres; AWCs) throughout the district. The NRCs are part of a welfare scheme to treat malnourished children living in remote forest villages, while the Shaktiman project was launched in 2007 to ensure nutrition for children, predominantly in the tribal areas of Madhya Pradesh. UNICEF India also provided skilled human resources and Ready to Use Therapeutic Food (RUTF) for malnourished children.

Until the time of the children's deaths, seven Public Distribution Shops (PDS) in the 13 villages sold only a total of 20 kilograms of rice and wheat per ration card per month. Moreover, the shops did not open every day. This is contrary to the guidelines of the central government and subsequent orders by the state government in 2003, that every PDS must provide a total of 35 kilograms of grain (15 kilograms of rice and 20 kilograms of wheat) per month to card holders. After the children died, and in response to directives from the central government, the Khandwa district collector ordered the PDS to open throughout the month and provide 35 kilograms of grain.

Unfortunately, all these relief measures were apparently only meant to tide over the 'emergency situation' and once the limited funds ran out, they were withdrawn. The problem with such short term measures was spotlighted by the death of two-year-old Tulsi Bisram, who died a few days after she returned home from the NRC. Tulsi received

treatment at the NRC for eight days, where her condition improved. Once at home however, her family was unable to provide her with the necessary nutrition, resulting in her death in November 2008.

In the same manner as the withdrawn child welfare and nutrition programs, the seven PDS have reverted to opening only a few days per month and selling merely 20 kilograms of grain.

## **October-December**

Including Tulsi, six children died of malnutrition in three villages of Khalwa block between October and December 2008. Neither Tulsi nor any child in her community ever received medical care by the AWC, which is situated far away. Moreover, no medical staff from the AWC visited the community to provide check-ups for mothers and infants.

None of the six deceased children's families have AAY or BPL cards. And yet, all six families suffer from a lack of food, and some even borrowed money to obtain food. The families are either landless or have non-irrigated small scale farms, from which it is difficult to produce food for everyday consumption. In either case, the rainy season—during which most of the children died—is the hardest time of the year.

## **Food security**

It is clear that immediate relief is not enough to prevent malnutrition deaths and cannot ensure food security. Together with ensuring the basic needs of food and health care for vulnerable groups, measures improving their livelihood should also be put in place.

India's public services of food and health care such as the PDS, AWC, Primary Health Centre and public hospitals are mandated not to provide for emergencies, but to consistently ensure food security as well as prevent malnutrition. They have been developed since India's ratification of the International Covenant on Economic, Social and Cultural Rights in 1979. The right to food is a fundamental right in India. It is a shame that thousands are denied this right due to the inefficient and corrupt bureaucracies running the public services.

In the majority of instances, the AWC or other public health institutes are inaccessible to vulnerable groups due to distance. They then have to see a private doctor, who is closer, even though the fees are higher and they usually have to take out a loan to afford medical care.

In 2003, the Supreme Court ordered that PDS shopkeepers should have their authorizations cancelled for any of the following reasons: They do not keep their shops open throughout the month; fail to provide grain to BPL families at BPL rates; make false entries on BPL cards; engage in black-marketing and siphon away grain to the open market; and/or hand over ration shops to non-authorized persons or organizations.

In addition, the Public Distribution System (Control) Order of 2001 states that any person contravening any provision of the order will be punished under Section 7 of the Essential Commodities Act (ECA) 1955; imprisonment for a term of not less than three months, which could be extended up to seven years together with a fine.

The PDS throughout Khandwa district—throughout the country in fact—have never been held accountable for their illegal actions however, encouraging them to commit infringements time and again.

Another important issue regarding food security within tribes is their lack of ration cards. A Supreme Court Order dated 2 May 2003, decreed that six 'priority groups', including primitive tribes, would be entitled to AAY cards. Additionally, in April 2004, the Court asked the central government to direct state governments to accelerate the issue of AAY cards to primitive tribes. Some tribes in Khalwa block such as the Korku still have neither AAY nor BPL cards. Although they are not officially identified as a primitive tribe, they have been demanding AAY cards as they are a group vulnerable in food security. Due to their continuous exposure to malnutrition and food insecurity, in September 2008, the Supreme Court Commissioners and Advisors recommended to the Madhya Pradesh government that all those who have no ration cards but have applied, should be entitled to ration cards.

Despite these clear failures on the part of public services, the government continues to avoid responsibility, either by saying the children died of disease and not malnutrition, or referring to 'parental ignorance' in a tribe that holds superstitious beliefs. The 'diseases' responsible for the children's deaths are all the symptoms and signs of malnutrition, as noted by the WHO.

In January 2009, Spandan submitted a letter to the Khandwa district collector and responsible government authorities regarding these matters, who have yet to respond.

# **Civil society groups urge President Obama, Congress to curb food speculation and fight global hunger**

*A press release issued by FIAN International*

(24 March 2009, WASHINGTON/HEIDELBERG) Today, a coalition of faith, hunger, international development, human rights, farm and food organizations including FIAN International sent a letter to President Barack Obama requesting decisive support for efforts to wring out excess speculation in agricultural futures markets that threatens the food security of hundreds of millions of people. The letter notes that, “A significant part of last year’s food price fluctuations were the result of excessive speculation in the commodities markets by the very hedge funds and investment banks that helped create the current economic meltdown.”

“The need for international action is urgent to fulfil the right to adequate food of the most vulnerable populations directly affected by the crisis,” says FIAN International Secretary General Flavio Valente. “This urgent action should include policy measures that guarantee immediate protection against factors that clearly are aggravating the crisis, such as, among others, speculation on the commodities ‘futures’ market.”

“Investors need to realize that their apparently innocent investments in food and energy commodity futures have driven up world food prices. This has forced hundreds of millions of people already living on the edge into desperate situations. Children are going hungry, even dying,” said David Kane of the Maryknoll Office for Global Concerns. “It is absolutely unacceptable that investors are enriching themselves off the suffering of so many. President Obama and the Congress must act quickly in order to avoid another food crisis this year.”

The letter was signed by 183 social justice and civil society groups including 107 international groups from 29 countries and 76 groups based in the United States. The United Nations Food and Agriculture Organization estimated that 200 million additional people in the developing world faced malnutrition because of surging food prices in 2008. The signatories urge the president and congress to re-regulate the commodity futures market to prevent speculation from continuing to contribute to global hunger and food insecurity.

The letter states that the 2008 food price volatility “could have been stopped with sensible rules that, if enforced, would have staved off the malnutrition and starvation that was caused by excessive gambling of food prices. Important reforms are needed now to prevent mega-investors from viewing the futures market like a casino where they can gamble on hunger.”

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# **Militarization and human rights in South Asia**

*Basil Fernando*

Militarization anywhere in the world is a difficult problem to deal with; South Asia is no exception. History tells us that countries in the region have undergone considerable periods of economic exploitation and social repression, whether under feudal or colonial rule. After independence, locally established regimes in these countries also turned to ruthless methods of social control often relying on the police and military to maintain power. The region therefore shares a common harsh history in terms of bloodshed and deprivation of civil liberties, although the degree of harshness may vary depending on time and place.

Before we can begin to understand and solve the problems stemming from such violence and militarization, a few preliminary considerations are necessary:

## **Difficult problems must be seen for what they are**

Misconceived notions of hope often mean that frank discussions of difficult problems are discouraged. Instead, it is suggested that discussion focus on positive aspects so as to sustain hope, rather than reveal the complexities of any issue. Attempts to generate positive attitudes detract from our responsibility and participation in solving the problem. They also facilitate looking at the world through rose-tinted glasses. This is not the real world however, which is particularly important when dealing with difficult societal situations. Contributing to the resolution of these requires serious attempts to first understand the problems, which may, at first glance, appear to defy any solution. With regards to militarization, if we are unwilling to look into the difficulties faced by people living in such situations, it is not possible for us to participate in finding a solution. Therefore, no apology is needed in presenting the difficult aspects of South Asian life today.

## **Experiences of average citizens are important**

While it is possible—and even legitimate in certain contexts—to discuss peace, security

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This article is an edited version of a paper presented at a Peace, Security and Development conference in Bangalore, India organized by the World Council of Churches, April 2009.

and development on a grand, theoretical level, when the concern is resolving problems, it is essential to focus on how they affect ordinary citizens. This should, in fact, be the entry point to understanding the problems themselves.

It is therefore appropriate to briefly discuss the difficulties facing one of the participants for this conference, Mr Santha Fernando. Santha is well known to ecumenical and civil society organizations. He was stopped at the Sri Lankan airport on his way to this meeting, and has been detained under anti-terrorism laws for more than five days now. We have learned that a detention order has been issued by the Ministry of Defense to detain him for 30 days, which makes any application for his release in court futile.

Santha Fernando is a person of whom would be said, “He would not hurt a fly”. And yet, he has been detained under charges of terrorism. Under ordinary law, any arrest must be based upon a reasonable suspicion of having committed a particular offense. What is the basis of any reasonable suspicion of Santha Fernando committing an act forbidden under the anti-terrorism law? There is obviously nothing of the sort, as those who arrested him are fully aware. We thus have a peculiar kind of arrest; an arrest for which there need not be any reasonable grounds. Only a declaration of the arrest is needed, in the face of which there is nothing the arrestee or his relatives can do. This is an exercise of power in the most absolute sense. Representations have been made by those with high social standing on his behalf, including bishops, lawyers and international organizations, all to no avail.

Santha’s place of detention is not any regular prison, which in Sri Lanka are harsh institutions. It is the TID (Terrorism Investigation Division), notoriously known as the ‘fourth floor’ and infamous for harassment and torture. Even if Santha Fernando himself has not been subjected to torture, he would have heard the screams and stories of others exposed to violence. A young Sinhalese journalist arrested and held in the TID for a short time was a changed man. He had not been tortured, but he saw and heard what was happening. After his release he did not even want to talk to anybody about his experience, as it had so thoroughly shocked and disturbed him. Detention in such a place is already enough punishment.

It must then be asked, what is the detention for, and what is the punishment for? Through the experience of Santha, someone known to us, we can understand what is faced by the tens of thousands of persons subjected to such arrest and detention, which has become a common occurrence. Everyone knows one or more persons who have faced such situations. It is necessary for us to take note of these experiences and participate in creating a relevant collective discourse. It is from this perspective that we should view the issue of peace, security and development.



## South Asia's master-servant relationship, as shaped by the caste system

The common heritage of a unique servant-master relationship within the South Asian culture is another issue that we need to keep in mind during this discussion. What makes this relationship unique, is the lack of physical chains binding South Asian servants, unlike the black slaves of the United States and elsewhere. In contrast, South Asia developed a comprehensive scheme of internalizing servanthood. The chains are inside the minds and hearts of the people themselves. Their instincts have been shaped in such a way as to reproduce habits of faithful service to masters, even with smiling faces. This continues today, mostly through the institution of caste and other modes of internalized branding and degrading of humanity. A recent novel, *The White Tiger* by Aravind Adiga, portrays this servanthood graphically:

The greatest thing to come out of this country in the ten thousand years of its history is the Rooster Coop.

Go to Old Delhi, behind the Jama Masjid, and look at the way they keep chickens there in the market. Hundreds of pale hens and brightly coloured roosters, stuffed tightly into wire-mesh cages, packed as tightly as worms in a belly, pecking each other and shitting on each other, jostling just for breathing space; the whole cage giving off a horrible stench — the stench of terrified, feathered flesh. On the wooden desk above this coop sits a grinning young butcher, showing off the flesh and organs of a recently chopped-up chicken, still oleaginous with a coating of dark blood. The roosters in the coop smell the blood from above. They see the organs of their brothers lying around them. They know they're next. Yet they do not rebel. They do not try to get out of the coop.

The very same thing is done with human beings in this country.

Watch the roads in the evenings in Delhi; sooner or later you will see a man on a cycle-rickshaw, pedaling down the road, with a giant bed, or a table, tied to the cart that is attached to his cycle. Every day furniture is delivered to people's homes by this man — the delivery- man. A bed costs five thousand rupees, maybe six thousand. Add the chairs, and a coffee table, and it's ten or fifteen thousand. A man comes on a cycle-cart, bringing you this bed, table, and chairs, a poor man who may make five hundred rupees a month. He unloads all this furniture for you, and you give him the money in cash — a fat wad of cash the size of a brick. He puts it into his pocket, or into his shirt, or into his underwear, and cycles back to his boss and hands it over without touching a single rupee of it! A year's salary, two years' salary, in his hands, and he never takes a rupee of it.

Every day, on the roads of Delhi, some chauffeur is driving an empty car with a black suitcase sitting on the backseat. Inside that suitcase is a million, two million rupees; more

money than that chauffeur will see in his lifetime. If he took the money he could go to America, Australia, anywhere, and start a new life. He could go inside the five-star hotels he has dreamed about all his life and only seen from the outside. He could take his family to Goa, to England. Yet he takes that black suitcase where his master wants. He puts it down where he is meant to, and never touches a rupee. Why?

Because Indians are the world's most honest people, like the prime minister's booklet will inform you?

No. It's because per cent of us are-caught in the Rooster Coop just like those poor guys in the poultry market.

The Rooster Coop doesn't always work with minuscule sums of money. Don't test your chauffeur with a rupee coin or two — he may well steal that much. But leave a million dollars in front of a servant and he won't touch a penny. Try it: leave a black bag with a million dollars in a Mumbai taxi. The taxi driver will call the police and return the money by the day's end. I guarantee it. (Whether the police will give it to you or not is another story, sir!) Masters trust their servants with diamonds in this country! It's true. Every evening on the train out of Surat, where they run the world's biggest diamond-cutting and polishing business, the servants of diamond merchants are carrying suitcases full of cut diamonds that they have to give to someone in Mumbai. Why doesn't that servant take the suitcase full of diamonds? He's no Gandhi, he's human, he's you and me. But he's in the Rooster Coop. The trustworthiness of servants is the basis of the entire Indian economy.

The Great Indian Rooster Coop. Do you have something like it in China too? I doubt it, Mr Jiabao. Or you wouldn't need the Communist Party to shoot people and a secret police to raid their houses at night and put them in jail like I've heard you have over there. Here in India we have no dictatorship. No secret police.

That's because we have the coop.

Never before in human history have so few owed so much to so many, Mr Jiabao. A handful of men in this country have trained the remaining 99.9 per cent — as strong, as talented, as intelligent in every way — to exist in perpetual servitude; a servitude so strong that you can put the key of his emancipation in a man's hands and he will throw it back at you with a curse.

You'll have to come here and see it, for yourself to believe it. Every day millions wake up at dawn — stand in dirty, crowded buses — get off at their masters' posh houses — and then clean the floors, wash the dishes, weed the garden, feed their children, press their feet — all

for a pittance. I will never envy the rich of America or England, Mr Jiabao: they have no servants there. They cannot even begin to understand what a good life is.

Now, a thinking man like you, Mr Premier, must ask two questions.

Why does the Rooster Coop work? How does it trap so many millions of men and women so effectively?

Secondly, can a man break out of the coop? What if one day, for instance, a driver took his employer's money and ran? What would his life be like?

I will answer both for you, sir.

The answer to the first question is that the pride and glory of our nation, the repository of all our love and sacrifice, the subject of no doubt considerable space in the pamphlet that the prime minister will hand over to you, the Indian family, is the reason we are trapped and fled to the coop.

The answer to the second question is that only a man who is prepared to see his family destroyed — hunted, beaten, and burned alive by the masters — can break put of the coop. That would take no normal human being, but a freak, a pervert of nature.

A few centuries ago, many enlightened persons talked about educating these servants and assisting them to be free from such restraints. Nearly all countries of South Asia saw various movements for education, and even attempts to provide opportunities to break this internalized servitude. Many generations of such work has had its impact. The servants have begun to wake up and to want to walk away from their servanthood. Their masters however, have not had the enlightenment to end the master-servant bondage and begin a mutual relationship on the basis of humanity and equality. Rather, they have turned to their guns to suppress servants who no longer want to be servants.

This situation, in which servants—the larger sectors of society—demand a fundamental change to the traditional political, social and economic relationships, is the essential background to militarization in the region. Any discussion on peace, security and development must give serious consideration to this historical conflict and the present state of contest by the underclass. This contest is likely to continue until an effective solution is found, by way of social and economic rearrangements recognizing the equality of all. Mere legal recognition of equality, while the basic master-servant relationship remains unchallenged, is of little use.

## **Consequences of militarization**

Having discussed some background and relevant factors to today's militarization within the region, let us look at a few incidents that indicate the impact of militarization on collective social behavior in different South Asian countries. These impacts include kidnapping, the loss of legal protection, the undermining of civilian policing, the loss of importance of the individual and the lack of respect for women, among others.

### ***Kidnappings***

Kidnapping is a widespread problem in several countries. The extent of the problem in India is suggested by a photograph of a group of young children holding placards with slogans such as, "Kidnapping Uncles, do not kidnap us". This photo comes from the state of Bihar, known for the complete collapse of its rule of law and basic institutions. As a result, kidnapping for ransom has become a common occurrence, causing much parental anxiety.

The photograph of a six-year-old girl in Sri Lanka, amidst her classmates, was published in the media after she was kidnapped from school. Within hours of her kidnapping, some persons contacted her family in town, as well as her father who was employed in the Middle East. They demanded a ransom of 30 million rupees. Two days later, Varsha's body was found in a drainage ditch with her throat slit.

To make matters worse, although the Sri Lankan police arrested two persons suspected of involvement in Varsha's kidnapping, they both died in police custody, precluding any public trial into the case. Not only did the police fail to protect her, they also failed to find her after the kidnapping, and they denied the rights of the family and the public to know what happened by summarily killing the suspects.

There has been considerable discussion about the frequent practice of kidnapping in Bihar as well as Sri Lanka. Businessmen, professors and many other persons have been kidnapped for ransom. Kidnapping also occurs for revenge or intimidation. It is also used as a political tool to harass or blackmail individuals wishing to leave certain political parties or engage in 'disloyal' activities. Frequent kidnappings of this manner create a certain psychological state amongst society. People become wary of independent thought, free speech, or even any initiative to assist others, in the fear of being kidnapped.

Frequent kidnappings are a symptom of the breakdown of social relationships as well as the institutions of rule of law and democracy. In these circumstances, kidnappings will be accompanied by extrajudicial killings, physical harassment of all types, the grabbing of private property, and illegal occupation of land.

***The loss of legal protection***

Under a rule of law system, many safeguards to individual rights are built into the legal structure. The practice of arrest and detention for instance, is subject to specific procedures to prevent any abuse of power. To further ensure that these procedures are followed, lawyers are legally entitled to intervene on behalf of the individual. An individual may not be aware of all relevant legal provisions, or may be afraid to assert their rights in the face of state officers who have the power to use force. Effective interventions by lawyers are therefore an essential component of protection.

When a society becomes militarized, the lawyer's role is minimized and may even completely disappear. This was noted in the March 2009 report of the UN Special Rapporteur on the situation of human rights in Myanmar: "None of the prisoners with whom the Special Rapporteur spoke had been represented in the court by legal counsel. Many of them did not even know the definition of the word 'lawyer'."

Although Burmese lawyers may wear black coats and ties like their counterparts in former British colonies, in reality they have little capacity to protect their clients. In effect, lawyers in Burma are a mere decoration. Their incapacity leaves their clients at the mercy of those who arrest and detain them.

The situation of the role and authority of lawyers in Burma differs only slightly from other South Asian countries, where lawyers complain of being ignored for a variety of reasons. The increase in militarization drastically reduces the legal space available for consulting lawyers. Emergency regulations and anti-terrorism laws—known by different names in different countries—allow for long periods of detention with limited access to lawyers. Often the possibilities for bail under such laws are also limited, leaving lawyers with little to do by way of applications to courts. Moreover, courts themselves do not have the power to adjudicate on the legality of such detentions.

Not only does militarization increase the possibilities of—and decrease the safeguards against—arrest and detention, it also dispenses with fair trial in large areas of the law. In particular, those charged with offenses under 'special laws' are given no trials at all. Guilt and innocence is decided not by the courts, but by the police, military and other parts of the defence establishment. The disposal of fair trial further limits the space for lawyers to protect individuals, however unfairly they may be treated.

When court powers are diminished, it is made clear that the real decision makers are these other authorities; they are the ones to be approached for necessary matters, not the courts. This realization inevitably leads to widespread corruption. The relatives of a detainee for instance, may try to obtain his release by paying bribes to officers involved in the detention or with relevant connections. In these circumstances, lawyers willing to

engage in such behavior become more wanted than those relying on professional abilities. Many lawyers complain that would-be clients first inquire into their connections to the authorities, before seeking their assistance.

It has been said that you know the value of lawyers only when they no longer exist. This is true in many parts of South Asia today; lawyers with real powers ensured by law are largely extinct.

The absence of a legal profession capable of effective protection serves to enhance militarization. Authorities therefore take extraordinary steps to attack and intimidate lawyers. Many lawyers appearing in cases against the ruling regimes are killed or suffer other grave attacks. Lawyers have had grenades thrown into their homes, their offices set on fire, or their names listed in government websites as traitors for making representations in courts on behalf of alleged terrorists.

### ***Judicial corruption***

*A law student attended a lecture regarding the prevention of corruption given by a senior lawyer. The senior lawyer mentioned many ways of avoiding corruption. The junior lawyer asked a question at the end of the lecture: "Sir?" he asked, "when I join a chamber to practice law - which is soon I expect- if I am given some money by my senior lawyers to carry to the judge, what do I do?"*

Complaints about corruption within the judiciary are heard throughout Asia. The increase of such complaints coincides with the increased use of emergency and anti-terrorism laws suspending the operation of normal laws. In fact, the greater the takeover by the military, the greater the possibilities for corruption.

The link between militarization and the increase of corruption among the judiciary is related to the undermining of the separation of powers. Under militarization, not only does the power shift to the executive, but the executive itself begins to come under military pressure. This change undermines the judiciary. Even though externally the courts may exist as before, internally there are substantive changes.

As with lawyers, those judges used to strict professional habits may find themselves making room for more ambitious and adventurous individuals ready to forsake justice for their own interests.

### ***Undermining of civilian policing***

Militarization impacts the local policing system in many ways. Most importantly, once the police are called upon to assist the military, civilian policing habits are undermined. Searching a home under normal criminal law for instance, requires police to obtain

a warrant from a magistrate, to use minimum force, and to maintain proper reports regarding all events. Military searches are of a different nature however. They include heavy arms and many personnel, and inhabitants are told to surrender or be fired upon. In other instances, the police and military are used as secret death squads. Such operations are carried out with no regard to the law.

Military operations are often accompanied by impunity, while police actions are controlled by the law. When the police begin to work within a military environment though, they also acquire a taste for impunity.

A key function of the police is to investigate crimes, and yet under militarization of the police, routine criminal investigations are among the first to deteriorate. This is because police officers become too busy in other operations, such as providing security to politicians, to carry out criminal inquiries. Furthermore, the police are often required to create obstacles in cases where the state itself is directly or indirectly involved; they are told to disrupt complaint receiving mechanisms, to intimidate witnesses, or to tamper with the official records. They may even receive instructions—from political sources or their own superiors—not to investigate. All this serves to land honest officers in conflict, while generating the attitude that the pursuit of integrity is nothing but a way to get in trouble.

Ultimately, police officers learn to use their uniforms as a means to make money. It is far from uncommon in South Asian societies to learn of illegal arrest, detention and the fabrication of charges by the police, merely to earn some profit. The police begin to associate with criminals, developing shares in brothels and the illicit liquor and drugs trade. They then pose a serious threat to citizens. Security is impossible when the police themselves become instruments of insecurity.

### ***Diminishing respect for women***

Militarized environments expose women to serious forms of dehumanization. One of our own conference participants quoted a Tamil woman from Sri Lanka saying, “I don’t to be born a Tamil and even more I do not want to be born a woman”. The atmosphere is one of male domination, with the corresponding images of men enhancing their power with guns. On the roads and at checkpoints, women are often humiliated by vulgar language and behavior.

Rape also becomes a common feature. The military allows a permissive atmosphere with regards to women to encourage men and youth to stay put in their assigned locations and duties. Encouragement of sexual adventures is also part of ‘keeping up morale’ among the armed forces. Many stories of girls abducted for sexual abuse and thereafter killed are thus heard in South Asia.

Apart from such direct abuse suffered by women at the hands of the military, they must also deal with problems affecting their loved ones, such as their husbands, fathers, brothers and sons being killed or attacked. Women heading families are a common feature in militarized societies. Under these circumstances, women face a twofold punishment. Firstly, in a society where economic powers are unfairly vested in men, their loss severely affects the economic life of women. Secondly, they must also bear the emotional loss of arbitrarily losing their menfolk.

Public debates regarding conflict and civil war in South Asia rarely discusses the consequences to women. As a result, a considerable amount of suffering is unrecognized and undocumented, even as it leaves a social impact. Life within society becomes bleak when large numbers of women are exposed to grave suffering, frustration and depression.

### ***The loss of the importance of the individual***

When the Sri Lankan Secretary of Defence was questioned about the assassination of well-known journalist Lasantha Wickrematunge by a BBC correspondent, his quick response was, “When thousands are being killed, does the killing of one person matter?”

When media reports of killings are heard daily for years, sensitivity is diminished. One more killing does not seem to make any difference. If a society is to remain sane however, a great sense of outrage must be expressed on the issue of life and murder. The loss of such outrage signifies an extremely negative transformation, both morally and psychologically. It also creates further space for killings to occur.

Any rule of law system is formed around the importance of the individual. Every wrong against an individual is of prime importance in the development of civil and criminal law. To define an act a crime means that it is a wrongful act against an individual and society will take notice and offer just retribution. When these crimes are no longer matters of importance, the very foundation of criminology is undermined. This can only signal the abandoning of criminal justice.

Once criminal justice is abandoned, society is left in a situation where no collective control can be exercised on people’s behaviour. Individuals can then no longer rely on collective support or protection.

The emergence of extrajudicial punishments is rooted in this loss of collective control and support. Mob justice is one such punishment, where people themselves decide on the punishments for whoever they find as alleged culprits of any offense. Proof of guilt and proportionality between crime and punishment are of little significance in these cases. More important is a sort of psychological satisfaction that something is being done against crime, which will intimidate others.



Another form of extrajudicial punishment is that meted out by the police or military, whereby persons are killed during or after their arrest. In different countries, this practice has different names—encounter killings, crossfire killings or self-defence killings.

Just as the life of an individual ceases to be a matter of importance, so threats to private property are also of no importance. Theft and land grabbing are common complaints in South Asia today. Legal redress for such wrongs is as difficult as redress for personal wrongs.

### ***Obstacles to the realization of contract and tort***

Civil law requires that dealings on properties and transactions be based on contracts. For this, it is essential that contracts can be enforced. When militarization undermines the law and courts can no longer inspire confidence to hold individuals to what they have agreed, the certainty of contracts is in question. The performance of obligations becomes dependent on who has greater force or authority at their disposal; in other words, those with police or military connections.

The same can be said regarding the law relating to tort. The system of compensation for negligent actions on the part of the state or private sector acts as a deterrent when effectively implemented. When those in power are beyond the challenge of the law, negligence cannot help but spread. A public health system left in the control of individuals not subjected to legal scrutiny for instance, can lead to negligence in the purchase of medicine, storage of medicine, the treatment of patients, record keeping relating to treatment and many related matters.

### ***Loss of memory, loss of language and loss of attitudes***

Once collective consensus on basic social norms and standards has been destroyed over a lengthy period of militarization, significant damage is caused to society's memory and language. This is well demonstrated in the experience of South Asia.

South Asian societies for instance, no longer have a concept of a public officer who will not abuse power. While this can be somewhat attributed to abuse of power under feudal and colonial rule, significant losses have occurred from achievements made in the 19th and 20th centuries. Many juridical notions developed after enlightenment in Europe were brought to South Asia. The transformation of medieval systems of social control to a process of reason is a significant human accomplishment. The development of jurisprudence and legal practices on the basis of rational principles rather than the whims of those in power is not just 'a western affair', but the triumph of humanity.

Such development requires enormous effort in any society. It involves the education of generations of people on these notions, as well as the practices required to uphold them;

educating civil servants, the intelligentsia and the population as a whole is no small matter. The introduction of these systems in most South Asian countries happened during colonial times, or with colonial influence. Inevitably, colonial interests conflicted with a rational system of justice and rule of law, which meant that only partial transformations occurred.

This meant that post-independence, new ruling regimes had to undertake several unaccomplished tasks if they wanted to see the functioning of effective justice and law systems. However, the new governments in South Asia faced such overwhelming responsibilities that they paid little attention to the development of a rational system of justice. Instead, they were consumed by the need to win popular votes. In the contest for power, they lost sight of society's long term interests.

The first casualty of emerging crises within the new nations was the limited system of justice administration. Modifications to the system in order to deal with immediate problems largely resulted in the removal of basic protection mechanisms and the erosion of rule of law foundations.

Militarization emerged from such a background, and began to undermine weak justice systems that could not withstand the pressures of the military. The narrative of how this happened in different South Asian countries is a sad tale of how the struggle to base the administration of justice on rational notions of jurisprudence was abandoned.

The failure of certain practices in society will inevitably lead to a lack of knowledge about them. When the judiciary no longer stands against the wrongdoings of the executive, people will forget what the independence of the judiciary, or the separation of power means. In the same way, words and concepts lose their original meanings. With the change of relationships, there is also a change in the meaning of words. 'Judge' may begin to signify someone who rubberstamps the diktats of the government and a cynic who allows justice to be subjected to the rules of the marketplace. A 'policeman' can be seen as a terror and someone who could engage in any kind of immorality without suffering any consequences. A 'trial' can become a mockery; a show trial. Legal procedures, held at one time as strict rules ensuring fair play, are now trivialities to be dispensed with by anyone, at anytime.

The loss of the memory of a rationally functioning justice administration is accompanied by a change in the associated language. This will affect social attitudes. People will begin to lose respect for relationships based on laws. The acquisition of goods and power by whatever means, emerges as a legitimate social ideal. The crudest forms of selfishness cease to be considered socially denigrating.

## **The meanings of militarization**

### **Politically**

If we compare militarism with democracy (even in the third world sense), we find:

- The source of legitimacy in a democracy is a constitution based essentially on the separation of powers. This is true even when it does not abide by any of the basic principles of liberal democratic constitutionalism.
- For militarism, the source of legitimacy is the capacity to use force; the gun itself is the legitimacy. The use of the gun is not subjected to any overriding rules or monitored by institutions. Under militarism, if there is a constitution at all, it is just a paper on which the military ruler or clique can incorporate whatever they wish.

### **Legally**

In a democracy, the entire system is subjected to the rule of law. This implies that:

- Laws arrived at by consensus are above everything else.
- The implementation of the law is subjected to a process laid down in the law itself.
- The rulers, like everyone else, are subjected to this law and process.

In any study of the change from a democratic state to a militarized one, we may notice the following stages:

- Initial resistance in varying degrees towards militarization.
- A lessening of democratic and legal resistances, and the serious weakening of the voices of the middle class.
- The virtual disappearance of any legal forms of resistance or opportunities for such resistance.

Under militarism, the ruler is above the law. This means that carrying out his orders need not be subjected to any process; the ruler can decide on whatever way his orders are implemented.

### **Socially**

- The military's increasing grip on society is accompanied by a gradual displacement of reason.
- The idea of building consensus on the basis of reason is displaced with blatant forms of propaganda that create the impression of artificial consensus.

- The distinction between truth and the absence of truth is made relative to the extent that all rules of language and discourse to convey meanings become irrelevant. Words can have whatever meaning given to them at a particular moment.
- Facts and figures lose significance, creating a 'no-fact zone'.

### **Accountability**

- Auditing ceases to be a matter of significance in the military context, while in the democratic context almost everything centers on accounting and auditing.
- Militarization gradually removes the distinction between public and private. This applies to property ownership as well as decision making.

### **Morally and ethically**

- Under militarization, the absolute prohibition against murder ceases to be significant; murder becomes a lesser evil. In this way, murder becomes a way to settle disputes and to threaten individuals.
- The cheapening of life extends to other areas, such as personal and family relationships. Moral abuse becomes normal even in relationships where guardianship is involved.
- Reformers who wish to improve things are uncertain of where to begin or whom to rely on for support.
- Distrust towards others is the norm.
- Powerlessness becomes the excuse for compromise, no matter how morally unacceptable.

### **The way out**

The only way out of such militarization is to:

- Develop the capacity to understand the shock and shame suffered under these circumstances, as well as collective shock and shame. In the aftermath of WWII in Germany, people suffered various illnesses, resulting in the famous book, 'The Inability to Mourn – principles of collective behaviour' by Alexander and Margarete Mitscherlich. Individual and social recovery was dependant on the capacity of the people to admit their plight and mourn, and thereby find the path back to recovery.
- Raise fundamental issues relating to public and legal institutions. Although public confidence in justice mechanisms may have been lost, recovery requires bold attempts to discuss these issues.
- Document every incident of abuse and develop databases and information centers for this purpose. Elie Wiesel, the Nobel prize laureate, recalled the advice of the Rabbis

at the height of the holocaust, when they told people to make records of everything they see happening to others or themselves. The literature that survived through this provided the basis for later reflection and helped the recovery process legally, socially and spiritually. One remarkable piece of this nature is the Diary of Anne Frank. There is no alternative to dedicated documentation of injustice and abuse. The night, when it comes, causes havoc—but faithful records of that havoc is an essential component for the recovery of the conscience.

# Asia: Human rights defenders and their protection

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In a region where the realization of human rights is low, and where governments and public institutions are responsible for many rights abuses, human rights defenders are viciously targeted for exposing such abuse and helping victims to obtain redress. It is in societies where all manner of rights are routinely denied—be they the right to food, land or due process—and where the law is used to protect those in power, that groups and individuals working to promote human rights are particularly vital. Not only do they identify rights violations, but they also work to address them. Their work serves not only as immediate intervention for victims of abuse, but also as a beacon for others, whether victims, social activists or fellow defenders. It opens up a little more space for the discussion and practice of rule of law and good governance. Their protection is therefore particularly important.

Human rights defenders should be protected not least of all for themselves; they have every right to work towards the realization of norms and principles set forth some 60 years ago, which have since become part of international law.

This article will therefore discuss obstacles faced by human rights defenders, the international norms that exist regarding their protection, and share some experiences of local protection.

## **Problems faced by human rights defenders**

### **ASIA: Protection for human rights defenders lacking across the region**

The Asian Forum for Human Rights and Development (FORUM-ASIA), on behalf of its 40 member organizations in Asia and other human rights organizations co-signing this statement, welcomes the assessment of the situation on human rights defenders and recommendations provided by the Special Representative (A/HRC/7/28, A/HRC/7/28/Add.2) as well as the report of the Secretary-General on the studies relevant to cooperation with representatives of UN human rights bodies (A/HRC/7/45).

The reports of the Special Representative clearly point out that the biggest flaw in the protection of human rights defenders in Asia lies in the deficiency of concrete measures by governments to implement the 1998 UN Declaration on Human Rights Defenders.

At this time, we are most concerned about the situation of human rights defenders in Bangladesh, Burma, Indonesia, Malaysia, Pakistan, Philippines, Sri Lanka and Thailand, as well as the risks faced by those who seek to cooperate with the United Nations and the Council's special procedures, who continue to face intimidation, physical and psychological assault and retaliation. For example, Pakistani human rights defender, Peter Jacob, and his colleagues of the National Commission for Justice and Peace have been accused of serious crimes based on the false allegations that they distributed a banned publication, which was a shadow report submitted by others to the Committee on the Elimination of Racial Discrimination (CERD) concerning Pakistan.

We are gravely disturbed that the police or the military, who are entrusted with the duty to protect, often fail to protect defenders and are instead perpetrating violence against them. In Pakistan, twelve months after the Pakistan Chief Justice was forcibly removed from office and arrested for demonstrating judicial independence, police tear gassed lawyers trying to visit his house where he has been detained since the beginning of November 2007. In India and Bangladesh, human rights defenders belonging to ethnic minorities, tribal communities, and indigenous peoples have been especially targeted for defending land rights and protesting injustices perpetrated by state actors. Irom Sharmila, a Nobel Peace Prize nominee from Manipur in India has been in judicial custody for the last seven years for peacefully protesting against the provisions of the Armed Forces (Special Powers) Act of 1958.

The danger to defenders often extends to their families and friends. We recall the torture to death, by the military, of Pakistani defender Baseer Naweed's son in reprisal for his father's work on housing rights.

We are alarmed that the discourses of counter-terrorism, nationalism and separatism are often used by States to criminalize defenders and justify attacks on them. Many defenders in Indonesia, the Philippines, Singapore, and Thailand who have spoken out for the rights of others have been accused of supporting terrorists. We are seriously concerned with the

trend of expansion of special laws and criminal suits against defenders. In Bangladesh, India, Indonesia, Malaysia, the Philippines, Singapore and Thailand, security laws have been enacted to restrain defenders from conducting their work.

We condemn the alleged role of the state in the disappearance of Thai lawyer Somchai Neelanpaijit, the murder of Indonesian activist Munir bin Thalib, and the murder of Cambodian union leader Chea Vichea. Mme. Representative and Mr. President, today, March 12, 2008, marks the fourth year anniversary of Somchai's disappearance.

Finally, while extending our appreciation to the Special Representative for her identification of indicators to monitor the situation of human rights defenders, we would like to echo the statement made by the Special Representative early this afternoon, "the situation of human rights defenders is a fundamental component of the overall human rights situation in any country." In this regard, we would like to ask one question: How does the Special Representative believe that those indicators on human rights defenders can best be included in the Universal Periodic Review (UPR) process which will have its first working group session in coming April? We believe, without such an assessment, the UPR process will be greatly weakened.

*A Joint Oral Statement to the 7th Session of the UN Human Rights Council from the Asian Forum for Human Rights and Development (FORUM-ASIA), Asian Legal Resource Centre (ALRC), Centre for Organization Research & Education (CORE), International NGO Forum on Indonesian Development (INFID), Lawyers' Rights Watch Canada (LRWC), Non-Violence International and Pax Romana-ICMICA/MIIC in association with Dutch Lawyers for Lawyers Foundation (L4L), Law & Society Trust (LST) and Task Force Detainees of the Philippines (TFDP), 12 March 2008.*

The above statement is a good summary of the situation facing human rights defenders throughout the region. When human rights are not respected, when they are in fact threatened by the state, it is no surprise that individuals and groups fighting for the protection and realization of those rights will face difficulties. These difficulties range from harassment, intimidation, the denial of basic rights, to being charged with various offences and having their lives threatened.

The case of senior Sri Lankan lawyer JC Weliamuna is indicative of the threats to life received by those working for the protection of human rights in the country. At 11:40pm



on 27 September 2008, two grenades were thrown at Mr Weliamuna's house. One grenade exploded on the balcony of Mr Weliamuna's bedroom, while he, his wife and two sons, aged four months and two years, were asleep. Although the explosion caused extensive damage to their home, they were fortunately unharmed. The police found a second, unexploded grenade in the compound of the house, which they managed to defuse.

Mr Weliamuna is the executive director of the Sri Lankan branch of Transparency International, an international NGO which campaigns against government corruption. On September 23, the NGO published a report naming Sri Lanka as 92nd out of the list of 184 corrupt governments around the world. Mr Weliamuna is also the best known anti-graft lawyer in the country, pursuing many sensitive cases. He has a long track record of making legal representation relating to human rights abuses such as torture, extrajudicial killings and forced disappearances. Mr Weliamuna and other lawyers believe the attack was a result of the cases he has been representing, most of which involve the government and state agencies.

The Bar Association of Sri Lanka condemned the attack and called on the Inspector General of Police to conduct inquiries and provide protection to Mr Weliamuna. The Bar Association also resolved to meet the authorities and the Chief Justice of the Supreme Court to discuss the protection of lawyers.

Despite this, on September 30, an unknown person tried to enter the premises of Transparency International at 1:30pm. Staff closed the gates, preventing him from entering. Then, someone on a motorcycle arrived and whisked away this person from the premises. Following this incident, Mr Weliamuna vacated his residence and was forced to take alternative shelter.

The grave attack on a senior lawyer served as a focal point for domestic and international concern regarding the increasing attacks on lawyers, journalists and other human rights defenders, as well as the climate of fear blanketing the country.

More than six months after these incidents, and in spite of all the public opinion and pressure on the police and government officials to investigate these threats, there has been no effective outcome. Mr Weliamuna has been forced to make his own security arrangements.

Human rights defenders will also face intimidation and harassment in their work. On 29 March 2009, a group of soldiers from Special Taskforce Unit 23 came to the office of the Working Group on Justice for Peace in Pattani province, southern Thailand and interrogated staff about their work. The group comprised of four uniformed and armed

men under the command of 1st Lt Benja Manochai, deputy chief. They came at 11am and stayed until 1pm. According to the soldiers, they had been asked to collect data on NGOs working in the province of Pattani. The soldiers returned the next day at 9am, saying that they had forgotten to take down the names of the staff.

Previously, on February 8, about 20 army and police personnel led by Lt Col Pravej Sudhiprapha arrived at the Working Group on Justice for Peace office at 5am in three pick-up trucks. They searched the office for three hours, going through data in the computers and files, and interrogated the two volunteers present.

This raid was conducted two days after the Internal Security Operations Command warned of militant plots. The commander of Region 4, stationed in the south of Thailand, granted an interview to the Bangkok Post newspaper on February 7. In effect he stated that “southern militants may take the opportunity to disguise themselves as rights activists in order to incite hatred against officials or to distort information to create misunderstanding about security among locals”.

This amounts to an open invitation to the security forces in southern Thailand to target human rights defenders as suspected terrorists. In short, it announces a policy for army, police and other personnel, already operating under conditions of almost total impunity, to target human rights organizations, their staff and volunteers.

In fact, according to 'Thailand's Unarmed Heroes: An Overview of the Situation of Human Rights Defenders', a report by the Working Group on Justice for Peace (November 2008),

Probably the most common direct threat faced by human rights defenders in Thailand is intimidation. Most often, this intimidation is verbal, although it can be psychological or even physical. Uniformed soldiers have been stationed in newsrooms or driven around factories to intimidate the media and unions. Human rights defenders working in the south are often intimidated at road blocks, when they try to enter villages, or when the military is escorting them into villages, sometimes including taking their pictures and threatening to torture someone into identifying them as an insurgent. Sometimes, the human rights defenders in the south will even be asked to the military camp so that higher level officers can talk to them and try and dissuade them from their work.

Human rights defenders trying to block or delay development projects may be approached and verbally intimidated by government officials or the businessmen who stand to gain when the project is completed. Intimidation by businessmen is a particular problem around the tourist resort island of Phuket, where national forest land and small villages are being overrun at an incredible rate in order to build hotel and condominium projects.

Occasionally, this intimidation can even extend to family members, including stationing uniformed military personnel outside the houses of the families of human rights defenders.

Human rights defenders are also targeted through the misuse of the legal system. Whether they are activists, lawyers, academics, journalists or others, they are being illegally arrested and charged on flimsy or non-existent grounds. This is particularly true in Burma. The Asian Human Rights Commission (AHRC) has documented over 50 cases of individuals being illegally arrested, detained and prosecuted after the nationwide protests against the military dictatorship of September 2007. As noted in the AHRC's 2008 Human Rights Report on Burma,

The cases are, as in the manner of the crackdown itself, characterised by patent illegality and often are little more than an exercise in nonsense, where the courts are being forced to participate in their own debasement and caricature. The trials are being held behind closed doors, with charges brought under one section of law and changed to another, without investigating officers being able to bring any evidence or even say when or where an alleged offence occurred, police witnesses admitting that they know nothing about the cases that they are presenting other than that they have been ordered to come and present them, and judges sitting as spectators to the absurd charade.

On 20 March 2009, the AHRC documented the sentencing of Pyi Phyo Hlaing and eight others to prison terms of eight to 24 years for their alleged parts in the 2007 protests. According to the allegations, the nine young men were variously involved in having contact with banned groups based outside the country, with printing and distributing unregistered documents, and with upsetting public tranquillity.

However, as in other cases of their type, the cases against these nine too were full of errors in law and procedure. First, there was no substantial admissible evidence against the accused, in part because the supposed evidence was obtained from a military intelligence officer and after the accused had been detained and interrogated in army custody, which is against the law. Second, one of the charges did not match the allegations against the accused and was groundless. Third, virtually all the witnesses against the accused were police. Fourth, the trials were held in closed courts. Fifth, the charges against the accused under one law were separated and they were penalized twice when they should have been joined together and only one penalty should have been imposed.

During the trials, the accused withdrew power of attorney from their lawyers as they saw that the trials were a sham, and they were unrepresented in the final stages and for sentencing.

Like other persons convicted in cases like these, the defendants were sentenced to prisons far from their relatives and homes. There are grave concerns for the health and wellbeing

of these detainees and others like them being kept in prisons in Burma, especially given that for the last few years the International Committee of the Red Cross has been unable to access inmates there.

South Korea has also in recent months been misusing the legal system to prevent and punish human rights work. It has been denying basic rights to human rights defenders, including the right to assembly and freedom of opinion and expression. When South Korean citizens attempt to realize these rights, they are invariably charged with conducting criminal acts, either through the wilful misinterpretation of laws, or even through the enactment of draconian new laws. This was most clearly seen in the candlelight protests of May 2008, where the government took drastic measures to prevent people from attending the protests. Subsequently, many protesters were charged with illegal assembly. Others were charged for expressing their opinions online, and a new charge of 'cyber-insult' has now been introduced.

#### **Restrictions on freedom of assembly**

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

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

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

#### **Unnecessary/excessive use of force**

...According to the procedure for dispersing illegal assemblies, police must first notify demonstrators that they are holding an illegal assembly three times. If demonstrators do not voluntarily disperse after listening to the notice, the police can forcibly disperse them, in accordance with the regulations for using force...

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

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

### **Freedom of opinion and expression**

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

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

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

To control material being published on the internet--as well as those publishing it--the president of the Korea Communications Commission has announced its plan to amend the law and increase the number of websites where a person cannot write an article without verification of identification--internet users have to fill out a form with their name and national ID number...

In the same authoritarian vein, the Ministry of Justice is to create a new criminal offence called 'insult on cyberspace'. Any writing anywhere on the internet that defames someone's honour or reputation, can result in a criminal penalty for the author. While decriminalization of defamation is the international trend, the South Korean government is moving so far the other way as to create criminal offences in cyberspace [Jose Ney, 'Democracy in South Korea: Mature society versus immature system', *Ethics in Action* vol 2, no 4, August 2008, pp 4-8].

### **International norms**

The Declaration on human rights defenders was adopted by the United Nations' General Assembly in 1998, on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights. Its full name is the **Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**; it is addressed not just to states and human rights defenders, but to everyone. "It tells us that we all have a role to fulfil as human rights defenders and emphasizes that there is a global human rights movement that involves us all."

The Declaration is not a legally binding instrument, but it is based on the principles and rights enshrined in other international instruments that are legally binding, such as the International Covenant on Civil and Political Rights. Moreover, the Declaration was adopted by consensus by the General Assembly and therefore represents a strong commitment to its implementation by states.

While the Declaration does not create new rights, it articulates existing rights in a way that makes it easier to apply them to the role and situation of human rights defenders, providing support and protection for their work.

It must be emphasized that all the rights enshrined in the various international human rights covenants de facto apply to human rights defenders. The right not to be tortured, illegally or arbitrarily detained, the right to freedom of expression and assembly, to effective remedies for abuse are all relevant for the work and protection of human rights defenders. In particular, the Declaration provides for an individual's right to promote and protect human rights, to undertake her work free from restriction and intimidation, to submit complaints to official institutions and agencies, and for protection under national law. States are further held responsible under the Declaration to ensure the realization of human rights for all citizens, to provide protection from violence and intimidation to those exercising their rights, as well as to provide effective remedies for any human rights violations.

## Who is a human rights defender?

As the full title of the Declaration indicates, it is the right and responsibility of *everyone* to protect and promote human rights; anyone who does so, is therefore a human rights defender. For this reason, the Declaration does not include a formal definition of who is a defender, but states in its annex (paras 4-5):

*Stressing* that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind...

*Acknowledging* the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals...

In keeping with the spirit of the Declaration, former Special Representative on human rights defenders Hina Jilani characterized defenders not on their professional background, status or skills, but on the human rights basis of their undertaken activities. In this manner, all those working to promote human rights, be they lawyers, journalists, NGO members, student activists, trade unionists, medical professionals, leaders of indigenous communities and social movements, members of national human rights bodies, witnesses of human rights violations, environmental activists, minority rights activists, humanitarian workers or staff of the United Nations, are all included as human rights defenders; this list is not exhaustive [See the special representative's January 2006 report to the Commission on Human Rights, p10, para 29].

According to the Office of the High Commissioner of Human Rights, all that is required to be a human rights defender—a 'minimum standard' if you will—is a genuine belief in the universality of rights, genuine intention to protect and promote human rights and the practice of peaceful action in doing so [<http://www2.ohchr.org/english/issues/defenders/who.htm>].

## Local experiences of protection

### Philippines: Death threats and extrajudicial killings

In 2005 and 2006, extrajudicial killings, abduction and enforced disappearances of human rights and political activists were taking place almost daily in the Philippines. Persons were receiving death threats, after which they would be abducted or killed. Given the complete lack of protection for all citizens, including human rights defenders,

adequate documentation of these human rights abuses in a safe and secure manner was an enormous challenge.

Under these circumstances, the following steps were developed with the purpose of either reducing the level of threats or preventing persons from being targeted.

### **Alert system**

By closely coordinating with local organizations, individuals, personal contacts and other sources, details of activists experiencing threats were collected in Hong Kong. It was necessary to directly communicate with victims, their families and persons in contact with victims, to ensure the information was credible, as there was considerable government propaganda to dismiss and trivialize activist murders as part of a 'communist purge'.

Information collected in this way was reported daily through the AHRC's Urgent Appeals system. The effectiveness of this approach was noted by several activists, for whom the level of threats reduced. It also resulted in authorities taking proactive measures to ensure their safety, as they became aware of the case being monitored outside the country.

These cases were also reported to various UN agencies. In fact, the UN Special Rapporteur on extrajudicial killings Philip Alston, quoted most of the cases documented through the Urgent Appeals system at the conclusion of his 2006 visit to the Philippines.

Additionally, those cases were also compiled into a special report, The criminal justice system of the Philippines is rotten, *article 2* vol 6 no 1, February 2007.

### **Campaigns outside the Philippines**

Given the limitations of movement and actions faced by activists inside the country, strategies were developed together with other organizations and persons in Hong Kong in order to respond to the security of local activists, as well as to articulate a clear understanding of the issue. This was additionally important in keeping the public better informed.

Numerous meetings were held outside the Philippines, where local activists and victims were invited to speak in public forums about their struggles. This helped persons from outside the country to understand the issue better; as well as developing solidarity for the human rights defenders and a more proactive approach in addressing their plight. In particular, the following three steps were taken:

### ***Convening a coalition***

The Hong Kong Campaign for the Advancement of Human Rights and Peace in the Philippines (HKCAHRPP) was convened in April 2005. The coalition was able to



conduct two fact finding missions in 2006 and a follow up in 2007. It was the only mission with a follow up component. The mission was widely reported in the Philippines and in Hong Kong.

### ***Posters, post cards and signature campaigns***

A website was constructed, where all reported extrajudicial killings were documented. This was a tremendous help in overcoming the fragmented nature of available information. The website also hosted an online petition urging for an end to extrajudicial killings. A poster about the killings was widely circulated and a postcard signature campaign was initiated, with signatures collected in Hong Kong from various meetings, which were then sent to the Office of the President. Signatures from Filipino workers in Hong Kong were also collected.

### ***Lobbying with the UN***

Consistent intervention with the UN agencies, through written and oral submissions, was also maximized at this time. By working together with numerous international, regional and local NGOs, a greater amount of information was made widely available for the better understanding of the issue. This also allowed for concerned persons to make a more effective response to the cases of extrajudicial killings and threats to activists. It also added value and credibility to the work of local organizations that were being targeted by government propaganda in order to discredit them.

## **Other methods of protection**

### ***Direct intervention with authorities***

Following complaints in certain cases, interventions have been made directly with the immediate police authorities and their superiors, and urgent appeals have been sent, averting further immediate danger. During the 2005 coup in Nepal, there were also several occasions when higher military officers were contacted directly by phone, in order to get persons released from army custody, or avert arrests.

### ***Court observers***

When court cases are heard in Sri Lanka, a large group of supporters attend the court together with the victim. In both Sri Lanka and Thailand, court observers from abroad have attended cases where there are serious security concerns, to improve morale and send a message that the local persons are not isolated.

### **Relocation**

The Home for Victims of Torture in Sri Lanka houses many individuals who are facing threats for pursuing complaints against rights violations.

### **Symbolic actions**

Following the disappearance of Somchai Neelaphaijit in Thailand, his wife Angkhana, was threatened for taking a strong stand. Advocacy contributed to local and international intervention to protect her, including by the European Union. She was also proposed for a number of human rights awards, with a view to improving her stature and ensuring greater protection.

# Censorship and cyber-thought crimes in Bangkok and Rangoon

*Awzar Thi*

A court in Rangoon on March 5 sentenced three men who didn't know each other to a decade's imprisonment for a crime that they never committed—or rather, for a crime so nebulous that if any of them had ever used a computer, he wouldn't know if he had committed it or not.

The three, Win Maw, Zaw Min and Aung Zaw Myo, were accused of sending news about the September 2007 protests in Burma through the Internet. All were already in jail for other purported crimes.

The next day, police in Bangkok came to one of Thailand's few outspoken and credible media outlets, Prachatai, searched the premises and arrested its director, Chiranuch Premchaiporn. She is accused of having failed to patrol, censor and delete the comments that readers left on a news website.

The police have charged Chiranuch under the Computer Crime Act 2007, which is only an “act” to the extent that the assembly of handpicked military stooges that passed it could be considered a legislature. According to this law, the importing of “false computer data, in a manner that is likely to cause damage” to a third party or the public or “is likely to damage the country's security or cause a public panic” can land the accused a five-year jail term.

Now let's compare that with Burma's Electronic Transactions Law 2004, which is better described as an executive decree rather than a law. According to this law, whoever does “any act detrimental to the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture” with a computer can be put away for up to 15 years; the minimum term is seven.

Although the law in Burma is more exhaustive in its categories of offence and harsher in its penalties, it is fundamentally the same as the one in Thailand. The two are being

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This article consists of edited text from several issues of a UPI column entitled 'Rule of Lords', [http://www.upiasiaonline.com/Human\\_Rights/](http://www.upiasiaonline.com/Human_Rights/). The author's work can also be read at his blog, <http://ratchasima.net/>.

applied in considerably different contexts and with different specific features, but they have a shared subtext.

First the different contexts: A closed court inside the central prison in Rangoon tried the three accused there in the absence of lawyers or relatives. The police had no credible evidence. It didn't matter, because the case was decided before it was begun. The trial and its outcome went unreported inside the country, which is still a technological backwater despite a big uptake in Internet use during the last few years.

By contrast, a court released Chiranuch on bail. She has received strong local and global support. She will be tried in public, with lawyers, journalists and human rights defenders present. The police might be able to lodge the charges against her with a few scraps of randomly acquired evidence, but once hearings begin, they will need more than this.

Thailand is one of the more technologically advanced countries in Southeast Asia. It is home to many millions of savvy computer users. Even accounting for its declining civil and political rights in the last decade, especially since 2006, it is still—in comparison to the majority of its neighbors, not least of all Burma—an open society.

Second, the common subtext, which runs as follows: You as a computer user may do something we don't know about and don't understand. We don't respect you and are afraid of this technology. We don't know what to expect and therefore we have drawn up a category of wrongdoing that can encompass any conceivable use of the Internet, and we will decide what does or doesn't fall within its boundaries, case by case.

Win Maw, Zaw Min, Aung Zaw Oo and Chiranuch in reality all stand accused of the same crime: a commitment to free speech. Their offences have nothing to do with the technology after which the draconic instruments they purportedly transgressed have been named. The medium offended no one. The stuff that passed through it apparently did. These are not cybercrime laws at all. They are thought-crime laws.

In his most recent report to the UN Human Rights Council, the special envoy on Burma has written that the Electronic Transactions Law violates a raft of international standards. He has called upon the government to review and revise this and other laws to lower the incidence of systemic rights abuse in Burma. There is no such envoy on Thailand, but were there one—and perhaps it would not be a bad idea—the same would be written.

Although the scale of abuse in Burma and vengefulness of its government far exceed that of Thailand, the computer crime laws in the two countries are not substantively different. They are in every respect an affront to human rights, and in their deliberate indeterminacy run contrary to legality itself. They are un-legal laws. They are an insult

to the millions of Internet users who deserve to be treated better, not least among them, Win Maw, Zaw Min, Aung Zaw Oo and Chiranuch Premchaiporn.

## **Thailand's censorship madness**

In December 2008, a campaign group opposing Internet censorship released a list of 1,303 new website addresses that, it claims, are among those a government ministry has blocked. Freedom Against Censorship Thailand notes with concern that most of the pages on the Ministry of Information and Communication Technology blacklist are being kept under wraps with the aid of the courts and a new cybercrime law.

The list includes chat pages on the sites of local independent media agencies like Prachatai and Fah Diew Kan, which are both subject to constant monitoring and police harassment, and a couple from *The Economist*. But by far the largest number of pages is from YouTube and other video sharing sites.

What the banned addresses have in common is that, predominantly, their subject matter is the royal family.

The *Economist* articles, for instance, both blamed the royalty and antiquated laws protecting it from head to foot for much of Thailand's current turmoil. "It cannot be good for a country to subscribe to a fairy-tale version of its own history in which the king never does wrong," one said.

Although the magazine has not been banned in Thailand, the edition with the two offending pieces was not available on the stands after distributors reportedly declined to import or release it.

Even then, the *Bangkok Post* printed a bland rejoinder from a former foreign minister who unsuccessfully bid for the top job in the United Nations, without publishing any part of the article to which he was responding. Perhaps it expected readers to find their way around the online barricade so as to read what all the fuss was about anyway.

The list accounts for only some of the total number of sites in the ministry's bad books. The newest minister has been quoted as saying that so far 2,300 such web addresses have been sealed off from the Internet-using public of Thailand, and that at least 400 more will soon get the same treatment.

The ministry has been devoting increasing energy to the blocking of sites for a number of years, and it was in October last year that a former minister announced the new firewall to stop content deemed critical of the royal family, which apparently takes precedence to pornography or material inciting religious or racial hatred.

But this latest round of censoring comes amid high uncertainty about the country's future, and together with a flurry of other reports about attempts to curtail free speech in Thailand.

Within the last few weeks, the chief privy councilor reportedly asked the military to monitor and act against websites offensive to the monarchy, which the army chief had already ordered be done anyway; supporters of ousted prime minister Thaksin Shinawatra were accused of committing an offence by placing the royal couple's image against an inappropriate slogan, and a new criminal complaint has been lodged against a British Broadcasting Corporation correspondent for a report suggesting links between the palace and the crowds that barricaded themselves into Government House and the airports last year.

Then there are opinion pieces like the one in *Matichon Daily* last month urging friends or relatives of someone showing signs of listening to the king's critics to take the person promptly for psychological treatment.

The suggestion that people showing less than undying gratitude to His Majesty might be deranged would be funny were the author—a former police general—not serious, not writing in a major newspaper and not speaking to deeply entrenched prejudices.

Whereas to people in the West the implication that critics of orthodoxy may be mentally unsound recalls the sinister practices of past decades in the Soviet Union and earlier periods of religious zealotry in Europe and the New World, in Asia it has its origins in ancient India.

Old tales with their genesis in some of the most stratified and hierarchical societies the world has known reiterate how ordinary persons who challenge the established order, who attempt to rise above or move outside the place assigned to them, go crazy in their folly.

These stories and their values continue to weigh heavily on people in countries that have inherited and interpreted them, including Thailand. After all, its king is still the great caste-assigned ruler the Maha Kasatriya, even if millions of his subjects would prefer to live in a country plugged into Sanook.com rather than one anchored to the Indus shoreline.

Bangkok's blocking of YouTube, Prachatai and *The Economist* is as much about ancient madness as modern censorship. To get past the latter requires only a little ingenuity and any of the growing number of computer programs designed to befuddle the Net police.

To get over the former requires a rejection of the idea that there remains anyone anywhere who is wholly above criticism. This, surely, is an idea whose time has come and gone.

# **Pakistani judge humiliates teenage rape victim in open court**

*(Edited text of statement issued by the Asian Human Rights Commission: AHRC-STM-075-2009)*

Court spectators and prosecutors expressed outrage at the behaviour of Additional District and Sessions Judge Nizar Ali Khawaja on 25 March 2009 in Karachi, when he allowed the case of a teenage gang rape victim, Ms Kainat Soomro, to become a spectacle in his courtroom. His conduct raises serious questions regarding the training of the country's judiciary.

While the 15-year-old victim was expecting an in-camera trial in the judge's private chambers, she was instead asked by the judge to describe and even demonstrate her rape, in detail, in front of the accused, Messrs Shahban Sheikh, Sheikh Ehsan, Roshan Aleem and Kaleemullah, all influential men who have reportedly threatened and bribed Soomro's family to settle out of court. According to journalists, at least 80 spectators were also present. Although public prosecutor Mr Maroof requested that anyone unrelated to the case be told to leave, the judge sided with the defense counsel, who argued that there were no legal obligations to bar citizens from an open court.

According to journalists and the prosecution, the defense counsel and the judge asked a string of invasive questions regarding the rape, which the teenager, who has had a sheltered, conservative upbringing, struggled with. She was asked when certain items of clothing were removed, exactly what actions were done to her, and when. In a few instances Kainat replied that she couldn't remember and felt out of her senses, having fainted; the judge then harshly berated her. Witnesses noted that he appeared to enjoy the invasive nature of the questions and Kainat's humiliation.

The Daily Dawn newspaper reported that objections from the prosecutor and assisting lawyers triggered an argument with the defense, which the judge simply quelled with a warning and adjourned the hearing to a later date.

In the two years leading up to the trial, Kainat's family have been forced to leave their home town due to threats, and have fought fiercely to get the case this far—the police originally refused to register the FIR. The trial of March 25 was undoubtedly an intensely traumatic experience for the teenager, and will do little to encourage other rape victims into court.

On April 11 Justice Khawaja is scheduled to hear the case of Nasima Lubano, 18, another young victim of gang rape. The Sindh High Court has already transferred her case from Mirpur Mathelo to Karachi due to death threats reported by the family.

The role of a judge requires that he be balanced, human and able to protect the dignity of vulnerable plaintiffs in court. In this last case Khawaja addressed the young victim with sarcasm, he expressed a strong gender bias and he humiliated her further in front of her attackers. He should not be given the chance to put another victim of rape through the same ordeal.

Since the Women's Protection Act in 2006 reformed the law surrounding rape cases, more women have been encouraged to use the legal system, but the experience continues to be harrowing, partly due to the attitudes of those within it. Pakistan is largely a harsh, patriarchal environment for women, and the country's courts are no different.

"Judges have not been trained or sensitized to gender issues," says former Supreme Court Judge Nasir Aslam Zahid, who now runs the Legal Aid Office for women and children in prison in Sindh. "The law has been made by men, courts are men, police are all male and when a court case involves a woman, everything is against that woman." Such attitudes mean that judicial and police figures are often unresponsive to female victims reporting crimes. In addition, figures for the physical abuse of women in custody are high, even though most of these go unreported. Female victims of rape or domestic violence are frequently too scared to go to court or seek redress. Soomro's case is just another warning, reminding Pakistani women not to expect justice or fair treatment in court.

The cabinet of President Asif Ali Zardari considers itself committed to women's issues, but true commitment requires proper assessment of the issues followed by bold, effective remedies. Just as police should be taught to deal professionally with sexual and gender-based violence, judges clearly need training to abandon old prejudices and act humanly towards victims. This is in fact the government's obligation rather than choice. States are duty bound to protect and promote the rights of women and children under international human rights law. Pakistan has ratified both the UN Convention on the Rights of the Child, as well as the Convention on the Elimination of All Forms of Discrimination against Women, which among other things, obliges it to protect those under the age of 18 "from all forms of physical or mental violence... negligent treatment, maltreatment or exploitation", and to "take appropriate and effective measures to overcome all forms of gender-based violence, give adequate protection to all women and respect their protection and dignity".

When a judge cannot or does not show himself able to do this in his court for the most vulnerable of plaintiffs, one wonders what he is doing in the profession in the first place.



# Indonesia's appalling prison conditions

*Christine Tambunan*

John—not his real name—is a prisoner taken into custody by the Kebayoran Baru Sector Police in Jakarta, Indonesia on March 12. What makes him different from other detainees is that he is HIV positive. He has been held under conditions so miserable that they amount to cruel, inhuman and degrading treatment.

On March 23, his parents found out that John was suffering severely. He was sick, and had neither eaten nor drunk for a very long time. His face was pale and he couldn't stop trembling. John had been held at the police station from March 13, but due to his poor physical condition he was transferred to the Soekanto Police Hospital on March 25, after his family's bail request had been rejected. In the hospital, he was placed in an isolation room in a building reserved for sick prisoners.

The ambience at the medical facility is more like a prison than a hospital, with patients kept in rooms behind iron bars and locked with huge padlocks. Apart from the smell of drugs, the place is permeated with the unpleasant odors of blood and feces.

The hospital wards contain four or five beds, fully occupied. There is a toilet in the room behind a low wall, with no door.

John was placed in one of three isolation rooms in the building. Normally, only mentally ill detainees are put in these rooms, which are only about two square meters in size. The room contained no bed or mattress. There was no proper light or ventilation, the walls were dirty and full of graffiti and the floor was covered in puddles and dirt. There was a toilet behind a low wall, and no clean water. Sanitation was appallingly lacking.

John was found lying in this room, staring blankly and unable to talk. He had received no medical treatment since his arrival. He would be seen by a doctor only after April 13, for the absurd reason that April 9 is a general election, April 10 is Good Friday, and April 11 and 12 are the weekend.

The poor treatment John received at the hands of the police is more or less typical for prisoners in Indonesia, especially those with HIV/AIDS.

The UN Standard Minimum Rules for the Treatment of Prisoners state that sick detainees should be transferred to specialized institutions or to civil hospitals, where they should receive proper medical care and treatment from suitably trained personnel.

The rules require that a medical officer examine every prisoner as soon as possible and take all necessary measures to restore his or her health. The medical officer is responsible for the physical and mental health of the prisoners, and should daily see all sick prisoners and all who complain of illness.

The officer must also ensure the hygiene and cleanliness of the institution and the prisoners, the sanitation, heating, lighting and ventilation of the building, and the suitability and cleanliness of the prisoners' clothing and bedding.

Furthermore, the UN Office on Drugs and Crime, in conjunction with the World Health Organization and UNAIDS, has recommended that Indonesia reform its correctional facilities and detention centers with regard to the health conditions of detainees. It stated that clinical services are an important component of programs to cope with HIV/AIDS and drug abuse.

In response to the recommendations, Indonesia issued a plan to strengthen the clinical services in prisons by 2010, in which the government promised to provide optimal services to every prisoner in accordance with the Universal Declaration of Human Rights and other international human rights treaties, as well as national regulations concerning the treatment of prisoners.

With so many laws regulating the right to health for the detainee or prisoner, how could there be such a place as the hospital to which John was sent? The head of the Health and Medical Center of the National Police General, Brigadier (Pol) Bambang, in an interview in 2005 stated that insufficient funds were the main problem. Also, apparently there is no law stipulating which institution is responsible for financing prisoners' medical care. Therefore the costs have been taken from the police's health and medical budget, placing serious financial restraints on services.

John's condition is indeed grave and the care he is receiving is far from adequate. He is suffering truly inhuman treatment, incompatible with human rights principles. His sad story demonstrates the urgent need for an independent monitoring body to ensure that prisoners receive adequate care and treatment in the future.

# **India: Meeting challenges nationally is a prerequisite for global leadership**

*Navanethem Pillay, UN High Commissioner for Human Rights*

*Statement by the UN High Commissioner for Human Rights  
National Human Rights Commission  
New Delhi, 23 March 2009*

***Distinguished members of the National Human Rights Commission and State Commissions, dear colleagues, ladies and gentlemen,***

I would like to sincerely thank the Government of India for its kind hospitality during my visit, and the National Human Rights Commission for organizing this important gathering.

I am very pleased to be with you today and to share some thoughts on the occasion of my first visit to India as High Commissioner for Human Rights. I feel a profound affinity with this great country and its people not only because my ancestors hailed from here, but also because, as a non-white South African who grew up under the apartheid regime, I, too, have endured oppression and multiple forms of discrimination. I, too, have known poverty and the unrelenting bite of prejudice and brutality.

Thanks to the leadership and inspiring determination of Mahatma Gandhi and Nelson Mandela, both of our peoples were able to shed colonialism and the repressive rule of the few. We leaped out of the crippling disadvantage of dependence and successfully pursued our dream of self-reliance.

In India and South Africa we truly stand on the shoulders of those two giants. They taught us that ideals and aspirations can prevail over the constraints of seemingly immutable circumstances, violence and oppression. We owe them the formidable, empowering change that has transformed geopolitics, the landscape of social relations, and our very lives. We owe them our trust in the power of dreams to reinvent reality and make the world a more just and hospitable place for all.

Their vision and legacy has inspired and now permeates a thick grid of human rights laws, institutions, mechanisms, global advocacy campaigns, and grassroot networks. Indeed,

there is a direct correlation between the ideals that sustained the freedom movement in India, and those that in 1948 were enshrined in the Universal Declaration of Human Rights. Such ideals continued to bolster the quest for liberty and rights of oppressed people all over the world.

***Dear colleagues,***

Today, the strength of India's democratic and legal institutions, as well as that of a highly engaged civil society and a free press, rests on solid foundations. Indeed, India must be proud of its national protection system, which includes the National Human Rights Commission. The Commission has played a prominent leadership role among national institutions at the regional and international level.

Together with state-level commissions and specialized bodies on women, caste, and tribal issues, this Commission is a catalyst in providing redress and sensitizing administrative and law enforcement bodies on human rights. The National Action Plan it is developing should provide a framework for bringing a rights-based approach to all government policies and programmes.

In this context, I wish to also commend the adoption of the landmark Right to Information Act of 2005 which increases accountability and transparency through the disclosure of information requested by rights holders regarding the conduct of government.

For its part, India's judiciary strives to enforce human rights, to provide relief to individuals, and ensure that government implements constitutionally guaranteed rights, including economic, social and cultural rights, as well as women's rights.

In groundbreaking judgments, the Supreme Court of India has interpreted the right to life to include nutrition, clothing and shelter. In another case concerning the issues of inadequate drought relief and chronic hunger and under-nutrition, the Supreme Court has directed the government to implement food relief programmes to halt starvation, supply schools with mid-day meals, and provide subsidized grain to millions of destitute households.

I am also impressed with the Vishaka v. State of Rajasthan case which, I am sure, is well known to many of you, as it encapsulated and addressed some of the challenges of multiple forms of discrimination, as well as violence against women. Let me simply recall here that in Vishaka v. State of Rajasthan, the Supreme Court reversed the judgment of a lower tribunal which had acquitted the five aggressors of a rape victim because the tribunal did not find it credible that upper caste men would sexually abuse a lower

caste woman. The woman appealed to the Supreme Court which ruled in her favor on the ground that the local government had neglected to protect her constitutional rights. Crucially, the case engendered legislative changes benefiting working women and promoted greater enforcement of women's rights.

Yet despite all these gains, the challenges that India faces, as is the case in many other countries, are manifold. Some of these challenges concern execution; some are rooted in structural national problems; others yet can be ascribed to the responsibilities (and public expectations) that pertain to an influential global player such as India. Allow me to expand on these topics.

### **Challenges in execution**

Economic liberalization and rapid economic growth have transformed many sectors of Indian society, but benefits and dividends have not always been shared equally. Poverty is still a grinding reality for millions of people in India. Deep, widespread and longstanding asymmetries in power, participation and wealth are now exacerbated by the global economic crisis. These inequalities are also compounded by the persistence of gaps in the implementation of the higher courts' decisions, of the recommendations of the NHRC, and of national laws and policies that promote and protect human rights and seek to support the most vulnerable. Such gaps are reflected in the work of the NHRC and human rights defenders in various states where the administration of justice and economic development has produced uneven results.

These discrepancies and shortcomings in implementation have emerged in the course of the Universal Periodic Review process (UPR) conducted by the Human Rights Council, the pre-eminent intergovernmental body which is mandated to promote and protect human rights. The UPR is a mechanism that allows for the examination of all UN Member States' records regarding human rights. It is based on information provided by governments, intergovernmental bodies and civil society. India underwent such review in April 2008. Remarkably, a group of 200 Indian nongovernmental organizations forwarded a joint submission for the UPR, underscoring the significance of the review and its potential to mobilize public opinion towards spurring positive change.

I urge India to pay heed to the recommendations that stemmed from the UPR. It should also welcome the visits of independent experts, known as special rapporteurs, who can help the government identify and address pitfalls in implementation, as well as structural obstacles standing in the way of human rights.

The country's protection toolbox could also benefit from the ratification of the optional protocols to human rights treaties, such as CEDAW and CRC, which establish "complaint

procedures.” These are mechanisms that can be used by individuals to report their human rights concerns by engaging those international bodies which are the custodians of human rights treaties and which monitor their implementation. I urge India to accede to such important instruments.

Moreover, India should repeal those dated and colonial-era laws that breach contemporary international human rights standards. These range from laws which provide the security forces with excessive emergency powers, including the Armed Forces Special Powers Act, to laws that criminalize homosexuality. Such legal vestiges of a bygone era are at odds with the vibrant dynamics and forward thrust of large sectors of the Indian polity.

### **Structural national problems**

As the Supreme Court has pointed out, India is “a country of people with the largest number of religions and languages living together and forming a nation”. This diversity—and its potential for igniting competing claims and even strife—makes closing protection gaps and leveling the implementation playing field all the more important.

Although India enjoys an array of laws and institutions designed to combat all forms of discrimination, religious and caste-based prejudices remain entrenched. In many states long-standing grievances of minorities, lower castes, or the poor have turned into violence.

Of particular concern is caste-based discrimination which is still deplorably widespread, despite efforts by the government and the judiciary to eradicate this practice. I note that in 2006, Prime Minister Manmohan Singh strongly condemned the practice of “untouchability” and compared it with apartheid. Moreover, Dalits, as well as tribal peoples, continue to live in abject poverty. Policies and measures that have been established to ensure relief for these groups, their access to justice, and accountability for perpetrators of abuses against them, have neither sufficiently alleviated their conditions, nor have they satisfactorily curtailed the climate of impunity that enables human rights violations. This is an area where India cannot only address its own challenges nationally, but show leadership in combating caste-based discrimination globally.

Both internal and external terrorist threats have led to counter-terrorist measures that put human rights at risk. The horrific terrorist attack in Mumbai has also polarized society and risks stoking suspicions against the Muslim community. It is imperative to counter violent religious extremism of any kind by insisting on peaceful coexistence, tolerance and acceptance of diversity.

In the past two decades, hundreds of cases of disappearances have been reported in

Kashmir. These cases must be properly investigated in order to bring a sense of closure to the families who for far too long have been awaiting news—any news.

I am aware of the landmark report by the Sachar Committee on the socio-economic status of the Muslim minority, and I encourage the Government to follow up on its important recommendations. An important step in this direction would be the adoption of a new Equal Opportunities Bill. The legislation would establish an ombudsman system to deal with grievances of “deprived groups” in line with the Sachar Committee recommendations, and would be a first step towards establishing a broader system to uphold equality of opportunity for women and other groups.

Finally, let me point out that progress in women’s rights must be defended. Sixty years ago, as the drafters of the Universal Declaration of Human Rights got down to work, it was the Indian delegate, Hansa Mehta, who ensured that women’s equal entitlement to human rights would not be merely subsumed under the “rights of all men” catch-all expression. She knew that a gender-implicit reference might be interpreted to the exclusion of women.

Since then, the space for women’s rights in India has expanded in law and practice. Thanks to the vigorous advocacy of women’s groups, in 2005 India adopted the innovative Protection of Women from Domestic Violence Act, which recognizes marital rape as a form of domestic violence. While criminal law has still not been amended to enable women to file rape cases against husbands or sexual partners, victims are given access to new remedies, including protection orders or injunctions against abusers. There is, however, pressure on the part of conservative groups to undermine the applications of the Act. Such pressure must be resisted. At the same time, women’s vehicles of recourse, as well as the menu of available remedies, must be widened.

Another empowering factor has been vibrant activism, especially by young women and newer constituencies, against attempts to constrain their sexuality and conduct on the basis of obscenity laws. Not surprisingly, also on this topic, advocates of traditional values and anti-secular forces have engineered a significant backlash against women. This phenomenon is not unique to India. Here—as elsewhere—urgent countermeasures are required to bolster the rights, participation, and position of women in society.

India’s economic growth has drawn many women from all backgrounds into the public and economic sphere, thus contributing to their visibility, economic empowerment and participation. I commend initiatives such as SEWA, the Self-Employed Women’s Association. SEWA’s network of women’s cooperatives, pursuing the Gandhian ideal of self-help and self-sufficiency, should be an inspiration to those who seek efficient and just ways to promote women’s entrepreneurship and resourcefulness.

We must now ensure that the current financial and economic crises are not used as pretexts to undercut gains in women's empowerment that make a society grow as a whole. There are already indications that in some countries recession is hitting harder those sectors where women are the predominant component of the workforce. Measures to respond to the economic downturn must not crowd out women's interests. Rather, they should strengthen women's participation through farsighted policies and public investment in areas where women's skills could either be brought to fruition or retooled. Crucially, such measures must take into account women's ideas and initiatives to alleviate hardship and jumpstart recovery.

### **Responsibilities of a global player**

As the largest democracy in the world, India plays a commensurate role on the international scene. With influence, of course, come responsibilities. An immediate opportunity for powerful advocacy is fast approaching in the human rights calendar. In less than a month the Durban Review Conference on racism, racial discrimination, xenophobia and related intolerance will take place in Geneva.

I have called for participation of all UN Member States in this important world conference. I have appealed to all States never to lose sight of the overall goal of the conference, that is, an assessment of implementation of the Durban Declaration and Programme of Action to combat racism and intolerance (DDPA) which States adopted by consensus in 2001.

Stepping up efforts and accelerating the pace of compliance with the DDPA is of paramount importance. The goal of attaining discrimination-free societies must override differences and reconcile diverse perspectives. As the Chair of the Asian Group within the Human Rights Council, India must exercise all its leverage to ensure that the outcome of the review conference is successful.

As it acts in its influential regional capacity, India should, at the same time, exercise its independent and individual judgment as a leading member of the Human Rights Council whenever appropriate and necessary.

I encourage India to speak out on its own, as well as in concert with others, whenever the human rights agenda that it cherishes and seeks to pursue domestically becomes of concern elsewhere. I urge India to continue to support freedom and rights wherever they are at stake, and particularly regarding the alarming situations in its own region, such as those in Sri Lanka and Myanmar.



***Ladies and gentlemen,***

The years to come are crucial for sowing the seeds of an improved international partnership that, by drawing on individual and collective resourcefulness and strengths, can meet the global challenges of poverty, discrimination, conflict, scarcity of natural resources, recession, and climate change.

Allow me now to briefly illustrate my Office's own contribution to fighting these threats and work for the universal affirmation of all human rights.

If the Human Rights Council is the premier intergovernmental body for the promotion and the protection of human rights, the Office of the High Commissioner for Human Rights, as part of the United Nations Secretariat, is the leading international advocate and independent champion.

As the UN Secretary-General noted, since its creation in 1993, the Office of the High Commissioner has grown to become a powerful engine for change. It has expanded dramatically, elevated the profile of human rights all over the world, provided expertise for capacity building to States and within the United Nations system, and preserved the autonomy of judgment and scope of action that are indispensable to human rights work and advocacy.

Today, OHCHR is in a unique position to assist governments and civil society in their efforts to protect and promote human rights. The expansion of our field offices and presence in 50 countries, as well as the increasing and deepening interaction with UN agencies and other crucial partners in government, international organizations and civil society that my Office has undertaken, are important steps in this direction. With these steps we can more readily strive for practical cooperation leading to the creation of national systems which promote human rights and provide protection and recourse for victims of human rights violations.

Dear colleagues,

Let me conclude by emphasizing that I intend to seek every opportunity to work closely with India on national, regional and global human rights concerns and priorities. In this pursuit, I will be guided by Mahatma Gandhi's appeal to responsibility and initiative. To put it in his immortal words: "We must be the change we wish to see".

Thank you.

# 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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