

# Ethics in Action

Vol. 3 No. 4

August 2009

ISSN 1997-2997



Asian Human Rights Commission

**Cover photo:**

Foreign domestic workers congregating in Central,  
Hong Kong on a Sunday.  
Courtesy of Jin Ju, 2009.

Asian Human Rights Commission 2009

Published by

Asian Human Rights Commission (AHRC)  
19th Floor, Go-Up Commercial Building  
998 Canton Road, Mongkok, Kowloon  
Hong Kong, China  
Telephone: +(852) 2698-6339  
Fax: +(852) 2698-6367  
E-mail: [ahrchk@ahrchk.net](mailto:ahrchk@ahrchk.net)  
Web: [www.ahrchk.net](http://www.ahrchk.net)

August 2009

Printed by

Clear-Cut Publishing and Printing Co.  
A1, 20/F, Fortune Factory Building  
40 Lee Chung Street, Chai Wan, Hong Kong

# C O N T E N T S

- 1**      **Hong Kong's invisible quarter million**  
*Doris Lee*
- 10**     **Hungry Cinderellas in Hong Kong**  
*Jin Ju*
- 12**     **The trail of a Thai son fighting for legal status**  
*Darunee Paisanpanichkul*
- 18**     **Small hands, big work: Girl domestic servants in Karachi**  
*Amir Murtaza*
- 23**     **Burma's sons of sorrow**  
*Awzar Thi*
- 26**     **Murder in Galle through the eyes of children**  
*Basil Fernando*
- 28**     **Indonesia must protect children's rights**  
*Christine Tambunan*



# Hong Kong's invisible quarter million

*Doris Lee*

## Visible/invisible

In New York City, people who work as au pairs or nannies carry out a role in the household similar to domestic helpers in Hong Kong. That is, they care for and educate children while parents are working, live in the home where they work, and share meals with the family. In an evening class on pastry-making in New York, I once met a young woman from Ireland who said she worked as an au pair. She was under 26, on a special one-year visa, and worked five days a week taking care of a family's children. She was free in the evenings and weekends, and so was able to afford the time as well as money to attend the cooking course. In fact, 'au pair' means 'on par' or an equal; they are meant to be treated as a family member and integrated into the family. Thus, they are 'visible'—they have evenings and weekends free, and are able to take classes, enjoy a social life, and develop relationships outside work. The character of a nanny played by Scarlett Johansson in the movie *The Nanny Diaries* reflected the idea that a nanny may not be high-status, but society can still accept her as a protagonist and determiner of her own fate.

In contrast, what is the status of domestic workers in Hong Kong, 'Asia's world city'? The chances of any Hong Kong citizen encountering a domestic worker as a classmate in an evening or weekend course are minuscule. It is true that a domestic worker's job duties extend far beyond just caring for children. Why however, are domestic workers not visible in society, except when working, or congregated in groups on their single weekly rest days? By 'visible', I mean seen as protagonists, as friends of Hong Kong people, as equal and accepted members of Hong Kong society at the community level or at the level of dialogue in the media. Even television dramas depicting the homes of the wealthy, which most likely would have at least one foreign domestic helper, totally exclude them from the script and the screen.

The current system of domestic helper employment is not intended to allow helpers free movement, career development or time for friendships. In fact, for six days a week, a domestic worker will usually have no time of her own, while a significant number of domestic workers do not even have their full, or even any, weekly rest day (despite it being illegal not to provide them a 24-hour rest day). Apart from that, the monthly salary

which most domestic workers get is barely enough to sustain one person and her family back home in the Philippines, Indonesia or elsewhere, much less allow her to take any classes. A quarter of a million foreign domestic helpers live among us in Hong Kong, sharing our home spaces and engaging the hearts of our children, yet we do not interact with them as equals or consider their problems as serious problems to be addressed by Hong Kong society. Rather, their existence in Hong Kong is within a system resembling apartheid: legal discrimination against them based on their migrant status, as well as social discrimination relegating them to separate social spheres so their daily struggles are kept invisible and out of social debate.

Although the current system is seemingly stable and fine as far as employers and the Hong Kong government are concerned, reconsideration has been prompted due to the pending minimum wage legislation. The Hong Kong government has decided to implement a minimum hourly wage for the first time in Hong Kong, and it has proposed to exclude all live-in domestic helpers, the majority of whom are foreign domestic workers. The major reasons given are that their working hours are difficult to calculate because of their unique job nature, and that it would cause hardship to the working women who employ them, if the overall monthly wage rises, as it likely would. Another reason is that these domestic workers are deemed to have 'high disposable income', given that they receive food and lodging separately from their monthly wage.

Through their unions, the foreign domestic workers insist that these reasons are not valid, and excluding them from the minimum wage that applies to all other Hong Kong workers would only strengthen and legitimize the existing discrimination and hardship they face. Therefore, they demand inclusion in the new minimum wage law and respect for their labour. Hong Kong trade unions, civil society groups including feminist and human rights groups, and many religious groups have also condemned this exclusion. The proposal to exclude live-in domestic helpers based on such flimsy reasoning reflects that the Hong Kong government and much of the middle class have a strong interest in maintaining their virtual enslavement.

This article will touch on some of the hidden realities of the lives of foreign domestic workers in Hong Kong, as well as how they are systematically exploited due to their low bargaining power. It will also look at the strong interest employers and the government have in maintaining this system. Finally, it will discuss the hidden but real costs to Hong Kong society of maintaining the current barbaric system.

## **Hungry cooks**

It is disconcertingly common for Hong Kong's domestic workers to be underfed. How can this be, given that they are the ones who shop and cook for the household? There

are several scenarios explaining this trend. One scenario is that the domestic worker is only given leftovers to eat; it is therefore a matter of chance whether her stomach can be filled. Another scenario is that a portion of the meal is set aside for her at the beginning, but a small one, inadequate to sustain a day's worth of physical labour. Yet another scenario involves the lack of time allowed for eating; the domestic worker must attend to the family while they have their meal, and to the clearing up immediately afterwards. The few minutes between these duties are often not enough to partake of her own meal. Furthermore, there is always the fear of being scolded for slowness.

Regarding the provision of food, employers in Hong Kong have two options. They may either provide their domestic helpers with food at home, or they may pay a minimum monthly allowance of HKD 300. This is far below what is required to sustain an individual with a balanced and nutritious diet; HKD 10 can only buy two bread buns or two bowls of instant noodles cooked at home. Speaking with the managers of domestic helper shelters revealed that it was common for helpers to be provided with neither food, nor a food allowance. They would therefore have to use their salaries to pay for food, which certainly costs more than HKD 300 a month in 2009. Also, the helpers often only have time to purchase food on their single rest day.

Apart from food, other basic human rights of the foreign domestic helpers are also encroached upon in many ways. Underpayment and deprivation of one full rest day are routine occurrences, and are in fact seen to be on the rise. According to a survey of 1,019 Indonesian domestic workers conducted in 2004,<sup>1</sup> 54 per cent were not given a weekly rest day. Statistics from migrant worker unions point to massive overcharging by recruitment agencies, which is illegal; Hong Kong law prescribes that agencies are allowed to charge a maximum amount of 10 per cent of the monthly minimum wage. Other encroachments include employers searching the belongings of domestic workers (to check for theft), employers withholding the house keys from the domestic worker, so that they are either locked in or locked out at all times, and physical and verbal abuse and threats. All of these result in stressful work environments for domestic helpers.

One Filipina domestic worker, Lilibeth Tumaca, shared her story of her short time with one employer (whose dog later bit her and caused serious injury). Her story reflects myriad problems an employer can cause to a worker, who usually attempts to cope with them for the sake of keeping her job.

---

1 The title of the publication is *An In-Depth Study of Indonesian Labor Migration in Hong Kong*, and is available as a downloadable PDF file from the website of the Asian Migrant Centre: [www.asian-migrants.org](http://www.asian-migrants.org).

This employer was really not good. She didn't buy me food. I started employment with them during a holiday. There was nothing in the house to cook and they were out all the time because it was holiday time. I bought bread for myself. The people went on holiday. I was bitten by their dog. But it was still OK. The mattress was so thin, I could feel the floor was cold, there was no bedding even, just the blanket. I worked from 6am to 11pm. There were two dogs, one rabbit, and one child of 7-years. I didn't have my own key, I could not go out.

One day, I think the second day, the family went out, and didn't leave food for me in the house. I could not go out and even buy any food, and when they came back they had not brought any food for me. So another day I asked if I could go to the boarding house nearby to get something, because I left something there – I did that just so I could get a chance to eat some food. Actually I had no money for food, and the boarding house gave me something to eat and some money.

Only one time the family was going to have dinner at home. So that time I went outside for marketing. (That was the only time I could buy food, so I bought bread for myself, because it would be my only food for the day.) After they ate dinner, they left a very little portion of food to save as leftover. I thought it was for me, so I ate it. Then the next morning the female employer asked where is the leftover food from last night. After she asked me, and I said that I ate it, she looked at me with outrage, and said: “You ate it?!” So I just kept silent and next time I would never touch their leftover food, even if it stayed in the fridge so long that it got spoiled. They preferred that the food got spoiled rather than let me eat it. I did not want them to get angry. And I didn't want that it would cause my termination.

There are both individual and systemic reasons for such violations of laws and human rights. While the element of individual responsibility cannot be overlooked, it only contributes to ongoing abuses if abuses are seen as purely stemming from the individual. It is both facetious and deceptive to simply hold the view that “there are some good employers and there are some bad employers”. It is necessary to look at systemic elements that allow the abuse to persist and prevent the workers from exposing and fighting them. If these systemic factors were to be eliminated, it would significantly deter abuses and make abuses easier to expose and eliminate. There are four particular systemic factors:

### **1) Huge recruitment agency fees**

Foreign domestic workers are required to pay enormous agency fees, for which they enter into huge loans typically amounting to HKD 21,000, or seven months' salary in the case of Indonesian domestic workers, or HKD 12,000, in the case of Filipina domestic workers. These must usually be paid each time the domestic worker signs a new contract. They translate into exorbitant amounts of money in their local currency, and domestic



workers will suffer great lengths of overwork and abuse to simply avoid losing their job and being forced to return home with unpaid debts and no certainty of finding a new job again/soon.

## **2) The 'two-week rule'**

The 'two-week rule' is the common expression used for Hong Kong's 'New Conditions of Stay', imposed by decree in 1987. According to this rule, migrant domestic workers cannot apply for a new job within Hong Kong if they break their contract and must leave the country at the end of each contract. Furthermore, they must leave Hong Kong within two weeks after termination, regardless of whether it was the worker or the employer initiating termination.

This pernicious rule, combined with the ease and low cost of employers' termination of domestic workers, adds to workers' job instability and to greater power in the hands of the employers regarding job terms.

## **3) Negligence of the Hong Kong government in enforcing laws protecting foreign domestic workers**

In both the major domestic worker-sending countries of Indonesia and the Philippines, there is evidence that the government and consulates formulate policies placing workers at the mercy and control of recruitment agencies. The Indonesian Consulate in Hong Kong for instance, does not permit a worker to directly engage in a contract with a potential employer; the worker must process the contract through an agency, even if the employer was directly found and not introduced by the agency. The Philippine Consulate disallowed direct hiring between worker and employer since 2003. From the worker's perspective, there is no plausible beneficial reason for this. In fact, the rule profits the agency and the home government.

As already mentioned, the Hong Kong government has a law by which an agency may not charge workers more than 10 per cent of their minimum monthly wage. This law is flagrantly violated however, due to the Hong Kong government's passive enforcement. In fact, the government places blame for overcharging on the domestic workers' governments, whom it claims it cannot influence. By failing to crack down meaningfully, the Hong Kong government contributes to the harmful effect of this huge overcharge. According to the Helpers for Domestic Helpers legal aid centre, even when an agency has pleaded guilty for overcharging, it is not a certainty that its license to practice will be revoked. On the contrary, the process of revoking an agency's license is long and complicated.

#### **4) Difficulties in pursuing legal cases against errant employers or recruitment agencies**

In Hong Kong, if a migrant worker wishes to file a legal claim, she must do so while in Hong Kong, not abroad. Since her visa only lasts two weeks after termination, she must apply for a visa extension which costs HKD 160, and may only last two weeks to two months, depending on the discretion of the immigration officer. She is also not allowed to work while waiting for her claim to proceed. Thus, in order to pursue a legal claim, say for unpaid wages, she must pay for her own food and lodging, pay HKD 160 at frequent intervals, and wait indefinitely for her case to reach conclusion. Her family back home will be deprived of income for that period. The law thus seems intended to deter foreign domestic workers from pursuing justice, rather than intended to help them gain justice when they are mistreated.

These four factors are the primary causes allowing abuses to take place and be silently tolerated by the foreign domestic workers in our midst. They significantly reduce the bargaining power of foreign domestic workers—whether to end a contract or file a legal case against employers or agencies—while giving leeway and impunity to employers and agencies. Such an imbalance of power enhances abuse, with employers losing perspective regarding what is reasonable to demand of employees under their charge. As a result, they behave with levels of pettiness and inhumanness unimaginable if they were not behind closed doors.

Hong Kong social movements should aim to eliminate these systemic factors, not only to protect domestic workers, but also to protect employers themselves from the corrosive effect of their excessive power over workers. The public must play a role in reducing the vulnerability of workers who are an important part of our society and economy. Certain factors that contribute to the foreign domestic workers' plight are admittedly beyond the influence of Hong Kong society—such as the poverty and lack of jobs in their home country forcing them to work abroad, or their government policies controlling their work in Hong Kong. This does not mean that Hong Kong society should be complacent or indifferent towards the struggle of these workers.

For a society that places—or seems to place—great value on democracy and equality between people of different races and genders, there is significantly little debate and concern about the widespread abuse and exploitation of the domestic workers, upon whom so many Hong Kong homes depend. When we hear news stories such as that of the abusive father in Austria, Josef Fritzl, who kept his daughter Elisabeth secretly locked in a basement as a sex slave for years, we are appalled. Apart from the element of incest, we recognize the horror of keeping a person trapped and forced to do something against their will. Forced work should invoke a similar repulsion as forced sex; they often occur

together, particularly when the workers are women. What then, are the reasons keeping society mute on the issue of foreign domestic workers, and the unwillingness to extend them equal rights?

First of all, working parents themselves suffer from long working hours. In addition to these, they must make time to go over homework with their children. There is a huge amount of stress and pressure placed on them. In these circumstances, they are presented with a system where one may legally demand 24-hour service, six days a week, from domestic workers who are controlled by agencies, family expectations, and the government, ensuring they work without complaint. This is all for a monthly rate less than a third of the required income for employers hiring foreign domestic workers. From the employers' point of view, it is an excellent market transaction—supply meets demand.

Second is the element of racial discrimination. It is not uncommon to hear of employers who separate the food, clothing, and other belongings of the domestic worker to avoid 'contamination'. The tendency to dehumanize someone from a different culture is exacerbated when the person has a lower economic standard. Foreign domestic workers are paid a very low monthly wage, which if divided by hours worked, would amount to less than HKD 10 an hour. As employer of someone of a different race and economic class, an abusive attitude can easily surface.

Third, most middle class families will opt for a market solution they can afford, rather than join others in raising society's standards. This is seen in their choices regarding education quality, food safety, and also in childcare. For good schools, middle class families may opt for expensive private schools; for safe food, they may opt to buy organic produce. In the same manner, middle class working parents do not seek government-funded childcare—affordable for all families—but prefer to take the option offered by 'the market', which is cheap and virtually unmonitored.

Any such market transaction is 'fair' enough for the buyer, who then focuses simply on getting her maximum monetary worth. Like a diner at a fixed-price hotel buffet who consumes as much food and as many varieties as possible, employers are motivated to extract as much work, of as many types from their workers as possible. As long as the government enforces no rules, employers reason that there being no maximum number of working hours for either employer or domestic worker, and as they themselves work long hours, they are within their rights as consumers to demand work as they see fit.

Fourth, the home is considered the private space of the family. As a result, how they treat their domestic workers is seen as 'their own business'. In the same manner as domestic violence, it is viewed by society as an awkward topic to broach or discuss frankly. Without the abuses being exposed however, they cannot be curtailed or punished.

The above factors have allowed the present system of foreign domestic worker employment to continue for a long time with little change. The two-week rule remains in place and domestic workers continue to get abused and easily terminated, while middle class families have become more dependent on and demanding of their domestic workers. There are many negative effects of this on society as well, including the erosion of labor and women's rights. Through the deepening of gender stereotypes, men become less inclined to take up their share of domestic work for instance, confining it as the natural task of women. Children remain dependent for extraordinarily long periods, unable to wash, feed, or clean up after themselves. Even parents become accustomed to doing no work in feeding and looking after themselves in a responsible manner. The movement to extend affordable childcare to all families for the purpose of creating truly equal opportunities for women to work takes a huge step backwards. There is no doubt that Hong Kong's system of foreign domestic workers should not continue if society is serious about realizing equal rights for women and all workers regardless of race or nationality. The system's existence makes it that much harder for women and workers to enjoy their rights and limit abuse. These significant costs to Hong Kong society have not been taken into account by decision and policy makers.

What exists now in Hong Kong can be called servitude, forced labour and apartheid. None of these should exist in a free and modern society, particularly when other countries such as Malaysia and Singapore, see Hong Kong as a model of how a system of 'imported' foreign domestic workers can be efficiently maintained. The smooth running of our families should not be founded on the fear and exploitation of another's material need and willingness to sacrifice for their family. While many Hong Kong citizens express disgust at occasional news stories detailing the worst excesses of employer abuse, these should not be merely seen as a few bad apples.

Several foreign domestic worker unions and social groups in Hong Kong have been working for many years to expose the suffering of these workers and demand policies that protect their rights and dignity. A new group working towards this end has appeared recently, the Families for Domestic Workers, which represents families or employers who support foreign domestic workers and unions in their struggle for equality and labour rights. This group hopes that more Hong Kong residents who are themselves employers, particularly those residing in Hong Kong permanently and with some political power, can assist in creating better awareness of the issue in the media and amongst the general public. A key goal is making the lives of foreign domestic workers more visible and less segregated. A website has been set up towards this end, to make public both the stories of foreign domestic workers and of employers: [www.opendoor.hk](http://www.opendoor.hk).

This will be an uphill struggle, given society's heavy dependence on the constant, day-long support of domestic workers in the absence of other government support for

working families; the lack of working hour limitations, and; employers' reluctance to regard them as equal workers. A few ways to initiate change, as mentioned above, are the removal of the two-week rule, cracking down on the exorbitant and illegal agency fees, and reforming the slow and costly judicial process for domestic workers whose rights have been violated. Additionally, it is necessary to continue efforts to spread awareness about the real lives of domestic workers, and to create platforms for interaction between foreign domestic workers and other Hong Kong people. Some progress has been made in Hong Kong regarding democracy and workers' rights; this should be continued in the realm of foreign domestic workers, particularly by including them in the minimum wage legislation.

---

*Note: Much of the information in this article comes through extensive dialogue and through general information provided by: Bethune House domestic helper shelter, Asian Migrants Coordinating Body, Asia Pacific Mission for Migrants, UNIFIL (Filipino migrant worker union), Indonesian Migrant Workers Union, Asian Migrant Centre, Helpers for Domestic Helpers, Lilibeth Tumaca and the friend and domestic worker of my family, Fely Tabay. Deep thanks to all of them.*

# Hungry Cinderellas in Hong Kong

*Jin Ju*

After Sunday service, Eddy (whose name has been changed) came to meet me for a chat. Sunday is her only holiday. Actually, it is not just a holiday, but her only free day of the week. It is not even a full free day however; she has to go back to her employer's home by dinner time. Eddy is like Cinderella in the children's fairy tale who has to be home by midnight (as referred to by author Pei-Chia Lan in 'Global Cinderellas'). Eddy would get a warning letter from her employer if she was late, while Cinderella's magic would wear off.

On that rainy Sunday, Eddy looked tired but she smiled at me. She told me that on Sundays she has to go back to her employer's home before 9pm. As her employer's family was on holiday at present, one of her relatives had come to lock the door after Eddy left the house in the morning, and would return at night to let Eddy in. Once she is in the house, the door will be locked again. Even while on vacation, Eddy's employer does not give her the house keys.

It has been over 10 years since Eddy came to Hong Kong with only her passport in her hand and hope in her mind. She was well educated in her home country, and worked as a nurse in the Middle East before deciding to be a domestic worker in Hong Kong to make more money. She is certainly making more money than what she earned as a nurse, not because Hong Kong society is generous or even honest enough to offer reasonable payment to migrant workers, but simply due to the currency exchange rate. In return for this extra money, Eddy has had to sacrifice her dignity, freedom and pride.

Eddy's contract with her current employer began last year. Her previous employer paid her HKD 4,000 a month, together with a HKD 400 food allowance, while she is currently paid HKD 3,580 with free food at home. Her current salary is the minimum wage for foreign domestic workers announced by the Hong Kong government. According to government regulations, employers should either provide food to the workers or pay them a food allowance, which is also stated in their employment contracts. Over the 10 years she has been in Hong Kong, Eddy notes that the minimum wage has never been raised; rather, it has been lowered. Some employers pay more than this, others pay less. How the government defines 'minimum' is unknown, although HKD 3580 is seen more as the maximum wage the Hong Kong government and employers can accept to pay out and the minimum wage the foreign domestic workers can accept to earn.

The other official minimum in her life is the HKD 300, which the immigration department states the food allowance should not be less than. Others say that a new contract should include HKD 500 for food allowance.

I have lost weight since I came to Hong Kong. On Sundays I have to buy some snacks to fill my hungry stomach. I have some of these snacks as I feel hungry even after meals. I am given food at home after all family members finish their meal. My employer's mother in law gives me some food. One small piece of fish with rice if they had fish for meal, two or three pieces of chicken bone if they had chicken for meal... it is never enough. However, I have to eat what they give me without complaints. Sunday is the only day I can go out. I then buy snacks with money from my pocket. I cook for the family but never go for marketing. I cook things that my employer buys from the market. I am never allowed to go out alone during the week.

The food allowance has not been seriously considered by the government or the employers. As a result, the minimum allowance has not improved with the influx of foreign domestic workers. Although Eddy's employer decided to provide food for her at home, she does not consider either quality or quantity, giving her only a small portion of leftovers. How can anyone work all day long with a hungry stomach? How can you manage a month's supply of nutritious food with only HKD 300 in Hong Kong? The cooking facilities provided by the employer are of little use when there is not enough money to buy ingredients to cook.

Eddy is not a slave or servant in the Middle Ages, and nor is Hong Kong society living in the Middle Ages. The minimum wage standard should be a criterion of a reasonable and healthy society, not a means for exploitation and indifference. The HKD 300 food allowance for foreign domestic workers exposes the Hong Kong government's apathy on their food security.

A year ago, I met an 18-year-old girl at Manila's international airport. She looked excited as she said good bye to her friends. She spoke to me standing behind her in the check-in queue.

I have been dreaming to go to Hong Kong for years. I have saved and borrowed money to pay for the agency to obtain a two year-employment contract. I will work hard and make lots of money in Hong Kong. I am not afraid of anything. I have a dream in my life. You are my first Hong Kong friend, what is your name?

The dreaming young girl might be on her way to a society of the Middle Ages. She might become another hungry Cinderella. Eddy too at one time had a passport in her hand and dream in her mind, but her passport is kept by her employer, and her dream faded amidst the pangs of a hungry stomach. Eddy plans to leave Hong Kong for a better working environment. All she will remember of Hong Kong are hunger and locked doors.

# The trail of a Thai son fighting for legal status

*Darunee Paisanpanichkul,  
Stateless Watch for Research and Development Institute of Thailand*

It is difficult to estimate the number of stateless and nationality-less persons in Thailand. In 2005, the National Security Council estimated the figure to be at two million, which is still being used as a reference today. During the past 5-10 years, there have been various groups of stateless and nationality-less persons concentrated along the Thai border to various neighboring countries as well as in remote areas of Thailand. Today, they can also be found in major cities in labor-intensive industrial provinces such as Samutprakarn, Samut Songkhro and Ranong, where laborers are required for fishing industries or in major tourist attraction areas such as Bangkok, Phuket, Pattaya, Chiang Mai. They can even be found in quiet rural areas as indigenous Thais who were not recorded or recognized in the civil registration database.

There are many obstacles and denials of basic human rights faced by stateless and nationality-less persons. They may encounter barriers in attending schools, seeking medical treatment or working. Stateless or nationality-less spouses face rejection when they want to register their marriage or access any legal/bureaucratic process. They are often arrested when travelling out of designated areas, or because they cannot produce identification documents. They live in fear of deportation, arrest and/or detention. Even children and individuals awaiting nationality verification may face deportation.

While the Thai government has been attempting to find solutions to the statelessness problem, there is still a long way to go, as documented in the struggle of one individual to attain Thai nationality.

## **Noi Bahai**

The case of Prasit Champakhao (or Noi Bahai, as he is familiarly called) may be well known to some of those working on the issue of statelessness in the country, but ordinary Thais will be unaware of Noi's existence, his struggles and the laws involved in his case. Thailand's stateless persons are also voiceless, and there are few initiatives by the government or civil society to empower them or spread awareness regarding their plight.

Noi was born of a Thai father and a Lao mother at Ban Khonkaen, Kwaeng Champasak, Laos. The only Thai legal document that proves his identity is Tor Ror 38/1, a special



form of civil registration giving aliens permission to stay temporarily in Thailand, which Noi registered for in 2004. In other words, Noi is a *Lao citizen* and treated as an illegal migrant according to the cabinet resolution on migrant worker management. According to the policy at that time, Noi could apply for a work permit and reside in Thailand for one year. After 2005, Noi did not renew his work permit and has been living in risk of arrest and perhaps deportation.

During February, March and June 2009, the Thai government allowed migrant workers of three nationalities—Burmese, Lao and Cambodian—to register and extend their work permits, in accordance with a cabinet resolution dated 18 December 2007. An additional resolution of May 2009 allowed workers with expired work permits, or those who had never had permits to also register for the permits during July. They all stand to have the right to work and stay in Thailand until 28 February 2010.

Learning of this policy, Noi was confused whether to register or not. By failing to register, he continues to be vulnerable to arrest on charges of illegal entry. But if he does register, his “Laotian worker” status will remain, despite his being born of a Thai father. It was at this stage that the Stateless Watch for Research and Development Institute of Thailand (SWIT) and the Bangkok Clinic Project for Giving Counseling on Personal Status and Personal Rights went to meet Noi at his village and discuss his situation.

### **Thai-Lao citizens, stateless persons and nationality-less persons<sup>1</sup> along the Mekong River**

For many Thai and Lao people living along the Mekong River, the water has never been a territorial boundary. Exchange between the two peoples has been occurring for a long time, and many people of both nationalities have relatives on either side of the river. Crossing from one side to another to visit relatives and friends, or to live with them, has been more common than exception. Noi’s father, Sawai, crossed over to live in Laos several decades ago with his first wife and their son and daughter, Boonyoung and Somjai. After his first wife passed away, he married his second wife, Saisamorn, a Lao citizen, and had two children with her—Noi and his older sister Wichuda. Like many Thai and Lao families along Mekong, the Champakhao family lived off the river.

In far flung villages, residents are not concerned with having their new born children registered with the government. As a result, all of Sawai’s children have become

---

1 According to the Thai legal system, a **nationality-less person** is an individual who does not belong to any state, whereas a **stateless person** is an undocumented person awaiting verification. When the Thai state has included the personal information of a stateless person in the civil registration database, and issued them with a 13-digit ID number, the person is no longer stateless; from a stateless person, they become a person without nationality. At this point the individual has documents to prove their identity and access to basic rights.

undocumented or stateless persons. It is possible however, that Boonyoung and Somjai may inherit Thai nationality from their father's lineage, under section 7 of Thailand's Nationality Act B.E. 2508 (1965, revised 2008). Moreover, if it can be ascertained that Sawai's first wife was a Thai citizen, Boonyoung and Somjai would stand to gain Thai nationality from their mother as well. Meanwhile, Wichuda and Noi should inherit Lao nationality from their mother, in accordance with section 11 of Lao's Nationality Act.

Around 1993, Sawai decided to move his family back to Thailand and settle down at Ban Bahai, Tambon Huayyang, Khong Chiam district, Ubon Ratchathani to live with his younger brother, Mr Chalong Champakhao. As Sawai's family began their new lives in their fatherland, Sawai made many attempts to convince the Khon Chiam district office to grant Thai nationality to Noi. He wanted his son's name, Prasit Champakhao, added to his house registration book (Tor Ror 14). His requests went unheard however, and Noi lived on as a stateless person, a person without nationality.

In 1995, Sawai and Saisamorn had another child, Somkid, who was issued with a birth certificate (Tor Ror 2) to prove his Thai nationality. His ID number begins with '2', and his name was added into the Champakhao house registration book (Tor Ror 14).

In 2004, the Thai government allowed workers of Burmese, Lao and Cambodian nationalities to register and apply for work permits. The procedure required all workers to be screened and have their personal information recorded in the civil registration database, after which they would be given temporary documentation (Tor Ror 38/1) allowing them to stay in Thailand for one year without being vulnerable to arrest.

Accordingly, local government officials told villagers in Ban Bahai of the scheme and suggested that applicable persons register for the Tor Ror 38/1 cards, also known to villagers as '*Bai Tong Kung Cards*'. When Noi learnt of this, and perhaps sick of the constant fear of arrest, he decided to register. In other words, he chose to become an alien person granted special permission to live in Thailand. His decision was not uncommon, with many persons facing similar predicaments choosing this as a solution; according to the National Security Council, about two million stateless persons or those having problems with their personal status were accounted for during 2004.



Noi narrating his experience through the house registration book, as Chalong and Somkid look on.

Even though Noi became a ‘Bai Tong Kung’ card holder, Sawai still persisted with his attempts to get him Thai nationality. Unlike the Thai blood that passed from him to his son however, even up to his death in 2006 he was unable to transfer the Thai nationality to Noi.

### **Younger brother born with Thai nationality while older brother is nationality-less**

It is particularly hard for Noi to accept his stateless status given that his younger brother—born from the same parents—was granted Thai nationality. The only difference between them is that Noi was born in Laos, while Somkid was born in Thailand.

According to section 7 of the Nationality Act B.E.2508 (1965), a child may acquire Thai nationality based on the hereditary principle. To prevent human traffickers from claiming to be the fathers of children they exploit, the provision is interpreted as requiring the child to be born of a ‘de jure’ father. In other words, the parents must have their marriage registered, or if the parents are not legally married, the father must register himself as the child’s father. Few people are aware of this legal provision though, and certainly not ordinary village folk. Sawai was one of the many persons who had no marriage license and had not registered as Noi’s father.

On 23 November 2008, Noi’s story was published in the national newspaper *Matichon Daily*. Some three months later, the Provincial Authority of Ubon Ratchathani instructed the district of Khong Chiam to investigate Noi’s case. Noi was then asked to apply for a Thai ID card and to have his name added to the house registration book (Tor Ror 14). At the same time, the provincial authority also asked Khonkaen University’s Department of Forensic Medicine to verify that Noi and his younger brother share the same DNA.

Khonkaen University submitted the matching DNA results to Khong Chiam district on 1 April 2009, stating the chance that Noi and Somkid are born of the same parents is 95.11 per cent; therefore, it “could be construed that Mr Prasit Champakhao and Mr Somkid Champakhao are born of the same parents”. Khon Chiam officials have failed to take any further action regarding Noi’s status despite this verification.

### **Acquiring witnesses**

Before embarking on the journey to Ban Bahai, SWIT met with DNA specialist, Associate Professor Kosum Chansiri from Srinakharinwirot University, Prasanmitra. After viewing the DNA test results, Professor Kosum confirmed that Noi and Somkid are born of the same parents, and was inclined to trust the credibility of the tests conducted by Khonkaen University.

Scientifically, there is just black or white. In DNA testing to verify connections between a

parent and a child, the chance is either 100 per cent or 0 per cent, black or white. For Noi's case, the chance is 93 per cent (according to the test results), so it is credible that they are father and son [Interview with Professor Kosum Chansiri 15 July 2009].

At Ban Bahai, the village headman and Noi's neighbors all stated that they knew Sawai well; even after he moved his family to Laos, he always crossed back and forth between the two sides during celebrations. They also confirmed that Noi was born of Sawai and Saisamorn.

Chalong also told SWIT that whenever his brother Sawai came to visit him, he spoke of his family in Laos, including his son Noi. Although Chalong had never seen Noi and Wichuda until they moved back to Ban Bahai, he has no reason to think they are not his brother's children.

Not far from Noi's home is the Ban Bahai school where he used to study. His teachers also confirmed that he is Sawai's son. Overall, the villagers believe Noi is Sawai's son, not only because that is what Sawai told them, but also from the way he raised Noi when he was still alive.

### **Noi and a small space for a Thai father's son, born without Thai nationality**

I want to know why I am still a stateless person, though my father was a Thai citizen. The DNA test confirmed my hereditary connection to my younger brother (who has been given Thai nationality). And in fact the DNA test was conducted at the instruction of the district office. And the results confirm we are siblings of the same parents. But why does the district office still not give me Thai nationality? [Interview with Prasit Champakhao (Noi) on 23 July 2009].

SWIT learnt that in order to go for the DNA tests, Noi had to borrow 8000 baht from his neighbors to pay for his trip from Ubon Ratchathani to Khonkaen. As of yet, he has not been able to pay back the money.

Noi's house looks dilapidated and leans slightly. It is situated close to Chalong's house and that of other neighbors, who give them some food and clothes to help them survive. Noi helps to turn on and off water pumps at the temple close to his house; he makes himself available for any kind of work around the village. However, he and his younger brother earn just a few hundred baht a month.

Noi aspires to better pay and wants to work in a big city or in Bangkok. He cannot leave Ban Bahai without fear of arrest and deportation though, as his temporary right to stay in Thailand (according to his expired Tor Ror 38/1 card) was terminated several

years ago. For most people, Thai ID cards and house registration books (Tor Ror 14) are important when they enroll in schools, apply for jobs, or conduct some legal transactions. For a nationality-less person such as Noi, those documents could mean new windows of opportunity and a better life.

## Efforts to enforce the law

A child is so fragile and he deserves to be treated as a human being and a child. In this case, it is unknown if he is a son born of a Thai father or not, pending the proof. But a test has been conducted to verify their father and son relationship, and now the process should be just the wait for the examination result paper. And once all the proof is there, he deserves to be treated as a “person with Thai nationality” [Associate Professor Panthip Kanchanachitra Saisoonthorn, Faculty of Law, Thammasat University, SWIT’s advisor, MSN message, 7 August 2009 ].

According to inside information, although the DNA test result verifies that Noi and Somkid are siblings of the same parents, it carries no legal effect. According to the 2008 revised Nationality Act, a child may acquire Thai nationality even if the father is not a ‘de jure father’, should there be ways to ascertain the hereditary relationship between them. For this provision to become effective however, it has to be supported by a Ministerial Regulation. One year and six months after the law’s revision, there is still no Ministerial Regulation.

In the meantime, letters have been submitted to the Ubon Ratchathani governor, public prosecutor, Khong Chiam Police Station, Khong Chiam Immigration Office, and other concerned organizations explaining the nature of Noi’s case. The letters also demand that Noi’s basic rights pending nationality verification be upheld, as he is his father’s son according to the revised Nationality Act. A person in such a status shall not be subject to arrest, prosecution for illegal entry, or to deportation.

All external efforts in Noi’s case are humbled by the patience required of this stateless son, despite being born of a Thai father. Such a child lives through long days, the time imbued with doubts, hopelessness and the harsh struggle for survival.

It is hoped that the authorities will grant Noi the necessary papers proving his Thai nationality, allowing him to live with dignity and equal rights, and that his case can be a useful lesson when assisting others in similar situations.

---

*The field research and legal analysis for this article was done in collaboration with the Bangkok Clinic Project for Giving Counseling on Personal Status and Personal Rights. Special thanks for editing advice to Associate Professor Panthip Kanchanachitra Saisoonthorn, Faculty of Law, Thammasat University. Thanks also to reporter Padsakan Jumiongraj and the Matichon Daily Newspaper.*

# **Small hands, big work:**

## **Girl domestic servants in Karachi**

*Amir Murtaza*

The use of children as domestic servants is one of the most pervasive forms of child labor in Pakistan. Children as young as five spend 12-14 hours a day, seven days a week, to earn money to support their families. An unfortunate social and institutional acceptance of this practice has made thousands of Pakistani children vulnerable to many forms of violence and abuse.

Research has recently been conducted in three posh areas of Karachi, capital of Sindh province, with a view to ascertain the personal/family background and working conditions of girl domestic servants in upper or upper-middle class localities. The research team approached 40 girls under the age of 18, and requested them to answer some questions. Two girls refused to take part, while one girl was forbidden to do so by her employer.

Overall, the research notes that since the root cause of girl-child labor is endemic poverty and systematic gender bias against female children, the government should provide assistance to girl domestic servants under the Benazir Income Support Programme. According to the research, the majority of girls do not earn more than Rs 1000; it would therefore be easy for the government to provide their families with this amount under the Programme, in return for which girls can attend school.

The research found that most of the girls were between 8-12 years of age (64 per cent), a considerable number were between 13-17 years (23.41 per cent), and some were below eight years (10.11 per cent). The majority of the girls belong to Siraki speaking families, followed by Punjabi, Sindhi, Balochi and Urdu speaking families.

Migration from small villages and towns to big cities is quite prevalent in Pakistan. The research substantiated this trend, with more than 70 per cent of the girls having migrated to Karachi from southern and central Punjab, interior Sindh and even Balochistan. The rest were permanent residents of Karachi.

One of the major causes of migration to big cities such as Karachi and Lahore is the seeking of better employment opportunities. Sixty-four per cent of the girls belonged to families where parents and children were involved in economic activities. A certain

number of girls (24.22 per cent) claimed their fathers did no work, while 10.65 per cent had brothers who attended school and did not contribute to the family income. One such girl noted,

My parents are absolutely clear that only male child deserves school education because after studies he will help them. My father is convinced that girls don't need to study as they have to help their mothers and contribute to family income. My mother is saving money from my salary because she has started the preparation of my marriage and huge finances are required for a girl's marriage in our community.

Moreover, these findings confirm the prevailing assumption that the parents of most working children are alive. Nearly two-thirds of the girls had both parents alive, while 16 per cent were in the care of a single mother, and 7.88 per cent with a single father. There was only one girl who had neither parents alive, and was in the care of her maternal grandmother.

Most of the girls had never attended any school, formal or informal (77 per cent), while some had attended a religious school or madrasa (22 per cent). A small number had attended formal school but were not able to even complete their primary education (7.33 per cent). Despite the low level of education among the girls, nearly all of them showed enthusiasm to attend school if they were ever given the opportunity.

"I really like my employer's daughter's uniform, and the way she speaks English. I love airplanes and always wanted to fly in one with my mother and six siblings, but not with my father, because of his indifferent and erratic behavior," said one girl.

The size of a family is often responsible for children having to work; a large number of the girls in the research (59.76 per cent) came from families of nine or more. Girls from families with seven or more members amounted to 27.43 per cent, while only 11.27 per cent were from families of five members. Not one of the girls was an only child.

The research also attempted to gauge the contribution made by the children to their overall family income. About 30 per cent of the girls said their family income was Rs 8000 or more, about 28 per cent said Rs 6000 or more, 21 per cent Rs 4000 or more and 17 per cent Rs 2000 or more. All the girls' fathers were manual laborers, which is a low paying and unstable profession. Child domestic servants are also paid low salaries, with half of the girls receiving Rs 1000 for an entire month's work. Another 17 per cent were paid Rs 1200 per month, 13 per cent received Rs 1500 and 11 per cent received Rs 2000. One of the girls was paid Rs 2500 monthly. Two of the girls received no salary for their labor, only three meals a day, clothes and shelter. These two girls said that since their parents could not provide them with basic necessities such as food and clothes, they had no choice but to work in their current environment.

Apart from these two girls, the others revealed they were able to save their monthly salary as their employers provided them with food and used clothes. Many of them saw their current work as a kind of apprenticeship; as soon as they learn all the daily chores—cleaning, dusting, washing clothes and crockery—they will get a higher paid job of around Rs 6000 per month.

While most employers are government officers or working in the corporate sector, where their employment terms would be clearly outlined, they do not provide specific job responsibilities for their child servants. In fact, one of the girls noted that employers take the services of child servants for granted. The children do all sorts of domestic work without any break—cleaning, dusting, washing dishes and clothes, preparing tea, and often taking care of small children. Most of them said they work over 14 hours a day, with some working 12 hours and others 10 hours.

On top of these long hours, those girl servants living in their employer's homes—44 per cent—get no weekly holiday. Only 36 per cent enjoyed a half-day off on Friday, while 7 per cent were given Sundays off.

With such a significant amount of their time spent working, the research team asked the girls what was the most enjoyable component of their work. A significant percentage of them responded that they liked to clean and dust in the lounge or bedroom, as that gave them the opportunity to watch television. One girl candidly noted, “Sometimes I even spend one hour cleaning and dusting Baji's room, as the television there is never off.” Other girls said they liked taking care of infants, as it allowed them to sit in one place and relax a little.

Nearly all the respondents admitted the occurrence of emotional violence during their work; only six per cent replied in the negative, while two per cent said they don't know. Verbal abuse, yelling and insults were frequent forms of emotional violence experienced. This was usually done by either the employer's wife or mother, although sometimes other male members of the family would also shout at them. According to a 10-year-old girl,

When I was very young I didn't understand the meaning of Begum Sahiba's (Madam) favorite utterance, “kis haram ki oulad hain” (whose illegitimate child is this?). When I came to know the meaning last year, one day I responded to the burly Madam that “main tumhari terah haram ki oulad naheen hoon” (I am not an illegitimate child like you). She beat me severely and pulled me out of the house. She never paid my salary of 22 days and even alleged that I had stolen Rs 500 from her drawer.

In fact, all the girls were familiar with accusations of theft from their employers. “Whenever the family lose or misplace anything, they blame us,” said one of the girls.



In such instances, the girls experienced physical violence, like slapping or punching, or threats of informing the police.

Once they even called the cops when my employer's youngest sister lost her mobile phone somewhere. The policeman slapped my face and verbally abused my parents. Fortunately, at the same time, Madam discovered the lost mobile phone under the seat of her car. They thanked the cops for their immediate response, but didn't bother to say a single word of apology to me. I left the house after finishing all my work and never went back there. I didn't even take my 10 days salary.

Due to their miserable working conditions, many of the girls suffer from severe depression and sleeping disorders. None of them have ever sought medical help however, being unaware of health facilities in their residential areas.

Unlike emotional and physical violence, it was difficult to get structured answers from the girls regarding sexual violence. Many respondents politely refused to talk about the issue. Of the rest, some admitted to experiencing sexual violence, while others bluntly denied any such incidents. According to those who admitted sexual violence, it was mostly other servants, especially drivers, who tried to take sexual advantages. In some cases, teenage boys in the employer's family were also perpetrators of sexual violence. The girls said that indecent and inappropriate touching was the most prevalent form of sexual violence. Two of the girls had experienced inappropriate touching by the grandfather of the family.

I really liked 'Dada' (grandfather) because he always greeted me with nice words and gave candies. However, I soon realized that the old man is trying to take sexual advantages. That was a horrible time of my life as my parents were in Punjab and I had no option but to stay in the house. My mother came after one month, and as soon as she arrived I left the house immediately but never found the courage to tell my mother what happened during her absence.

The research therefore suggests that sexual violence is as common as emotional and physical violence. It is the lack of empowerment, young age and social taboos surrounding sexual norms and behaviour that prevent girls from honest discussion and redress regarding this violation of their dignity.

From community based organizations to international donor agencies, union councils to the federal government, there is theoretical agreement that affirmative steps need to be taken to provide solace to child domestic workers. The research suggests that a campaign to sponsor girls should be launched, with the government requesting expatriates, local businessmen and philanthropists to bear the daily and education expenses of girls from families experiencing absolute poverty.

In big cities such as Karachi and Lahore, donor agencies with the collaboration of NGOs should establish a helpline specifically for girl domestic workers in troubled situations. The helpline should coordinate with service providers—government or non-government—to provide some relief to the girls. Community based organizations should initiate evening school and health programmes particularly for girl domestic workers, and government and institutional donor agencies can help them to this end. The country's electronic and print media can also play a role by spreading awareness about the problems of girl child domestic workers. In fact, the extent of the problems faced by child domestic workers, boys or girls, is enormous. Research, surveys, investigative or fact-finding reports can only spotlight a tiny portion of these at a time. Various forms of violence and exploitation are still unexplored.

---

This article is an edited version of a research report. The research was conducted by a group of students headed by Amir Murtaza, who is a human rights activist in Karachi, Pakistan. He is at present working as a development consultant.

# Burma's sons of sorrow

*Awzar Thi*

Accompanying all the latest to-do over whether or not Burma's regime is trying to obtain nuclear weapons has been the usual background noise about the menace of its conventional armed forces. Foreign pages' editors excitedly describe the army as having half a million troops, as if they are all poised on the border to spill over into neighboring territories at a moment's notice.

Nobody knows the real size or capability of the army in Burma, although that doesn't stop analysts the world over from sifting through secondhand sources for something with which to make a claim about this or that. Not even the army itself is likely to know precisely how many personnel it actually has, given that unit commanders play with numbers to satisfy the requirements of their superiors.

But one thing we do know is that not all of these soldiers are adults. Last week a Thailand-based group released a new report on the recruitment of children to the Burma army. The report, entitled 'Child soldiers, Burma's sons of sorrow,' explores government claims to be addressing the problem of child soldiers, and presents evidence to the contrary.

The charge that the armed forces in Burma use children as personnel is not new. Throughout the 1990s many agencies released reports on this topic, and in 2002 Human Rights Watch issued a bulky document on the incidence of child recruitment.

In 2005 the government set up a committee to prevent children being taken as recruits, and has reported to international agencies and diplomats to demonstrate its seriousness about the problem. It has also had a few children returned to their families under the watchful eyes of United Nations staff.

But according to a new 72-page study by the Yoma-3 news service, the army is having trouble with large numbers of deserters. Add to that increased demands from headquarters for more new recruits, and local commanders are hard pressed to get enough adults to join. So they continue to bring in underage boys, sometimes through deceit, sometimes through promises, sometimes through threats.

Fourteen-year-old Maung Phoe Zaw says that he accepted a lift while returning home from shopping in July 2004, not knowing that the car driver was an army sergeant. He was taken to a camp instead of his house, and after a bit of training was sent to an operations area in a region not far from Thailand. He finally fled in 2008.

Kyaw Naing Soe says that in November 2003 he was picked up with a group of friends at a railway station and held at a camp for seven days during which time they were threatened with imprisonment if they didn't enlist. He was then 13. Other narratives recount how children were kidnapped or offered money to join.

Yoma-3 cites a former recruitment sergeant as estimating that the average number of underage soldiers in the battalions with which he worked would be 70 to 80. He says that when recruiting he paid no heed to the age of recruits because of the need to meet quota targets. Recruiters also pay local officials to bring them new enlistees.

Although the study is modest in size and scope, the concern of the government with not having any independent reporting on the continued use of child soldiers is borne out by the treatment of people whom it blames for assisting to collect and document these stories.

Among them, the head of a small human rights group in Rangoon, U Myint Aye, was last November sentenced to 28 years' imprisonment for having had contact with people involved in making this report.

The charges the police leveled against him included that he sent false information on child soldiers abroad, and also arranged for one boy to go and speak at the United Nations, who was subsequently unable to return home. By contrast, the International Labor Organization has said that the complaints of forced labor it received through Myint Aye were legitimate.

That such a small document comes at such a high cost to those who made it speaks to the size of obstacles faced by groups and individuals who seek to address the recruitment of

children to Burma's army. While in most other countries in Asia this sort of work would generate public debate and create pressure for an official response, in Burma it motivates the authorities to hunt for the people responsible and redouble their efforts to keep things under wraps.

There will be more reports like this before the problem of child soldiers in Burma is in any way addressed. They may not significantly affect what goes on within the country, but at least should contribute to more informed writing about an army that is not for the most part well-trained, equipped and professional. Rather it is a heterogeneous mass that includes in its ranks large numbers of underfed, badly-paid and ill-equipped teenagers.

(The Yoma-3 report is available online at:

<http://www.yoma3.org/bookmark/CSreport/Yoma3CSreport220709.pdf>)

# Murder in Galle through the eyes of children

*Basil Fernando*

Four pairs of eyes belonging to four siblings, the eldest of whom was fifteen, were fixed upon a scene happening on the morning of July 22 at Beligahahandiya in Galle, Sri Lanka. That scene will remain fixed in their minds for the rest of their lives, overpowering anything seen before then, or in the future.

They were on their way to school with their father, who had stopped the car at a junction to buy their breakfast. As he was returning with the food, two gunmen wearing motorcycle helmets appeared behind him and instantly started shooting. As the first gunshot was heard, the eldest one tried to open the car door and get out. He heard the last words of his father, "Epa, epa," (don't, don't). Then there were more shots and their father fell down. The gunmen came closer and shot him again, then disappeared on a motorcycle.

The name of the man shot down was Deshabandu Dushyntha Seneviratne. Forty-years-old, he was the opposition leader of the Galle Municipal Council. He was a member of the United National Party and the chief ministerial candidate for the forthcoming elections of the southern provincial council. He was running in opposition to the ruling party candidates.

For the rest of their lives, Deshabandu's children will ask themselves who killed their father and why. The family has already announced that he had no personal enemies and was in fact a very popular person, liked by everyone. In all fairytales and stories that teach morals, an enemy always has some kind of resentment or cause to extremely dislike the person who is targeted. Often, it is the villain who gets killed and the killer is a hero, standing for some higher principle. Thus, besides the personal loss, there will be a moral issue that will haunt these children: who is the hero, their father or his killers? Or perhaps they will wonder whether such considerations are altogether irrelevant.

All that is known about the dead politician is that he was popular, judging by the number of votes he had received every time he contested the elections to the Galle Municipal Council. His friends also say that he was a good orator and was therefore capable of drawing more attention to his party. His popularity was also indicated by the large number of people who gathered outside Karapitiya hospital when news of the shooting

spread. Therefore, it is not far from the truth to speculate that as a candidate, he would have drawn more votes at the coming provincial council elections for his party.

Can that be a just cause for a killing? Civic education will deny this. On the contrary, Deshabandu's children will be taught that participation and contesting of elections are basic rights of any citizen. If they were to doubt this, it would be impossible for them to honestly participate in political life within their country.

The children saw two gunmen wearing helmets kill their father, but will they ever know who these two persons were? Judging by the experience of recent times, it is highly unlikely that they will ever be identified. To put the minds of these children to rest, adults may explain that some unidentified gunmen are hired by others to do such jobs. The four siblings will thus learn early about contract killings, and they will forever wonder about the mysterious persons who plotted the killing.

The children would have heard about police investigations, courts and judges. They may have images of men in khaki uniforms in their minds. Several such officers might have taken their statements regarding what they saw that morning. They will perhaps be called to give statements at the inquest inquiry by the magistrate.

As the days go by, and the mysteries behind their father's death remain unresolved, the children will naturally wonder about the role of these men in uniform, and even that of the courts. When these officers and courts cannot reveal to them who killed their father and why, their future faith in these institutions will be hampered.

The children will soon realize that they are part of a very large group of Sri Lankans who will never know why their parents were killed or who was responsible. They will also learn that, by and large, their fellow citizens have little curiosity about these tragedies. In this way, the children will be learning the unwritten and unspoken rules operating within their motherland.

Among these rules are: Killing for hire is a job for many people nowadays; hired killers are supported through a secret process hardly anyone can penetrate; attempting to penetrate that process may carry the risk of death; it is no longer a state obligation to investigate crimes competently, promptly and efficiently; in fact, the state does everything possible to disorient and destabilize the criminal investigating agencies; the prosecutors—the Attorney General's Department—will use 'absence of evidence' to justify their failure to prosecute the crime; the judiciary will also prove to be impotent in dealing with the situation; being a member of an opposition political party is an offense, even if it is not an offense under the penal code that carries a death sentence; except for their immediate family, nobody is sad or worried about the murder of their loved one.

Four pairs of eyes of four young children are destined not to have any real explanation offered to them regarding what they saw by either the state or society. While these children are told over and over again to love their "marthrubhumi," or motherland, in that motherland there is no longer any guarantee of justice.

# Indonesia must protect children's rights

*Christine Tambunan*

July 23 is National Children's Day in Indonesia, set up to remind people that children's rights must be respected, protected and fulfilled, or the future generation is likely to be blighted. Sadly, many Indonesians were shocked this month by the prosecution of children in what has come to be known as the case of the ten shoe-shiners.

Ten boys who work as shoe-shiners at the international airport in Jakarta are now facing a long and exhausting court hearing. It began on 29 May 2009 when they were arrested for allegedly gambling in the airport area. The youngest is 11-years-old and the oldest 15. They are all from impoverished families living near the airport and work daily as shoe-shiners to earn a living.

Unfortunately, on that day there was a security operation at the airport that forced them to hide in the bus park. According to the boys, while waiting for the operation to be over, they spent their time spinning a coin and guessing whether it would land on heads or tails. To make the game more interesting, they placed bets of 1,000 rupiah (about 10 US cents) per child.

The children were interrogated without legal assistance and then transferred to the Children's Prison in Tangerang, where they were detained for a month before finally being released on June 26, due to considerable public pressure. Unfortunately, the police transferred the case to the Tangerang District Prosecutor and the boys are now facing trial.

Apart from their traumatic experience as a consequence of their one month detention, the boys missed their national exams and failed to be promoted to the next grade. During the investigation they had little support from their parents, who were too poor to travel easily to the police station, which was far from their homes.

According to Indonesian law, juvenile cases should be tried before the Juvenile Court. The law calls for special consideration and treatment when dealing with crimes involving



underage children. Under the law, juvenile cases should place the best interest of the child as the utmost priority.

For juveniles facing criminal charges and the legal system for the first time, the police play a significant role in the initial stages. Police officers essentially determine whether the juvenile should be released without charge or face the next stage of prosecution. If an arrest is deemed necessary, the public prosecutor then decides whether the offender should be released or face juvenile court.

In this case, one month's detention was of course disproportionate punishment. The police should have known that these children were students and the national exams were coming. Detaining them would surely bring them more harm than good. Shockingly, when their parents requested bail, the police refused to release them and decided to extend the detention.

This case reflects two serious problems in Indonesia, apart from the technical legal issues. First is the poverty that surrounds these children. Their parents' income is only around 5,000 rupiahs, (about 50 US cents) per day, which forced these children to gain extra income for the family by being shoe-shiners after school.

Neither they nor their parents are to blame for their decision to do this work. For children from underprivileged families, playing around after school would be deemed a waste of time. Pressure from the social environment leaves them no option other than earn money to meet their families' needs.

This poignant situation is common in poor families as parents encourage their children to work. Of course they cannot work in the formal sector. Thus shoe-shining in the airport, which is close to their homes, is preferable.

Second is the problem of the police who want to create a good image for themselves by sending more people to prison. This suggests to the public and their superiors that they have succeeded at their jobs. By sending these ten "gamblers" to prison, the local police give an impression that they are putting a stop to criminal acts and creating a clean and comfortable airport.

But was the police action in investigating and detaining these children a wise option? Creating a nice image at Indonesia's main international airport should not take precedence over children's rights. A case like this should be handled with extra attention as it involves vulnerable youngsters. If they are stamped with the status of suspects, defendants and prisoners, this will only bring negative effects and blacklist them as adults.

Considering the conditions in Indonesia's penitentiaries, detention is a particularly serious threat to a child's interests. Children's prisons, like adult facilities, are overcrowded and poorly equipped at best. Moreover, many children are forced to remain in adult prisons while they await trials and verdicts. In adult prisons children are vulnerable to physical, sexual and mental abuse.

Indeed, there should be institutions other than prisons to reform children's behavior if it is deemed criminal. Ultimately, to protect children's rights in relation to criminal issues, Indonesia should tackle the problem of poverty, as well as reform its penal and juvenile systems.

# 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.

Asian Human Rights Commission

19/F Go-Up Commercial Building 998 Canton Road

Mongkok Kowloon, Hong Kong

Tel: (852) 2698 6339 Fax: (852) 2698 6367 Web: [www.ethicsinaction.asia](http://www.ethicsinaction.asia)

