

Ethics in Action

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**Asian Human Rights
Creative Media Award 2010**

UNJUST
Josefina Bergsten

what I and many people believe should be changed.

Padma Devi

as it was pointing in the direction of

ASIAN HUMAN RIGHTS COMMISSION



Asian Human Rights Commission

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AHRC banner, 2010

Asian Human Rights Commission 2010

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Child labour: Hunger and child malnutrition invisible in the Philippines

Jin Ju

“If I was interviewed, the complaint would be filed and I will go to jail,” Winnie said. Winnie does not have any family who was sent to jail, but was so told by neighbors. Before I spoke to her, a field worker accompanying me seemingly told her that we would interview her. The term ‘interview’ seems to be very sensitive, like ‘investigation’ or ‘complaint’. It explains the extent of social censorship and the meaning of speaking-out in a society.

Winnie looks much older than her 35 years. She is thin and seems to be emaciated, with sunken eyes. She was easily noticeable as she worked in the sugarcane plantation along with other women. The workers were putting fertilizers on the ground, and Winnie seemed exhausted as the sun went down.

“Can I talk to you? I am from Hong Kong,” I briefly introduced myself to Winnie. “I have to work till 6pm,” she said, so I told her I would come back. I did not want to disturb her daily work, which is the only source of food for her and her children.

Winnie’s house is located at a walking distance from the plantation in Balintawak village, Escalante City, Negros Occidental, Philippines. Escalante is one of the vulnerable areas regarding food security. Winnie was not at home when I arrived, but I recognized her daughter, who resembles Winnie. Twelve-year-old Jainy was cooking for her mother and brother, who would soon return from work. Their evening meal would consist only of rice.



Winnie working in the sugarcane farm



Other female sugarcane workers

Jainy goes to school thanks to her mother and brother's hard labour, but no one knows when she will have to stop studying like her brother. Fourteen-year-old Alponso stopped schooling last year and is now engaged in farm labour at another sugarcane plantation. Both Alponso and Winnie are paid 100 pesos (USD 2.2) each per day, which is less than half the minimum wage in Negros. They work from 6-10am in the morning, and 1-6pm in the afternoon.



Only rice for dinner

They generally work Monday to Saturday, and take a holiday on Sundays, but work is not always available, particularly during the off-milling season from May to September.

Despite the Philippines government announcing early this year that public schools would provide free education for all children up to high school, most public schools continue to demand tuition fees, from which poor children are not exempted. Winnie has to manage Jainy's school fees as well as other expenses for stationary and books. Her husband died of liver cancer in 1997, when Jainy was born. While her husband was alive, he supported the family by fishing in Cadiz city. After his death, Winnie moved to Balintawak village and started working in sugarcane plantations. She had been managing food and school fees for the two children so far, but 100 pesos was too little to cover everything and Alponso quit his schooling last year. The two children do not remember eating meat; rice and vegetables are their only staples. Alponso's labour not only reduces the burden of school fees and other expenses, but also contributes to filling their stomachs. Giving up their education is indeed a big deal in poor families.

In the Philippines, many children are engaged in child labour. One of the six reported forms of worst child labour in the country is child labour in sugarcane plantations. Child malnutrition or food insecurity is not commonly connected to child labour. The 23rd indicator of the FAO guidelines for adequate food assessment however, is the net primary school enrolment ratio. In other words, how many children are forced to work in a society instead of reading books at school? Suppose that all the children under the age of 18 go to school one day, how many children and adults will starve on that day?

Suggesting to Winnie's family that we have dinner together, I asked Alponso, who was lying in the hammock with Jainy, if he was hungry. "No," he replied, "I am not hungry, but just want to sleep." He is perhaps too tired to feel hunger.

Officially, the Philippines' literacy rate is over 90 percent, irrespective of gender. The definition of literacy is to read and write in one's mother tongue. After six years of

primary school, children in the Philippines can read and write. Four million children participate in child labour, with more than 50 percent of them between the ages of 14-17. Once they complete their primary education, the children go to work in order to feed themselves and/or their families. They are no longer children then; perhaps the minimum age to be seen as an adult should be lowered to 14.

In fact, the Philippines government legally allows child labour. The Child Labour Law prohibits the employment of children under the age of 15 except when working directly with a parent, when working in public entertainment is “essential”, and when the work does not endanger the child’s life, safety, health or morals or does not interfere with schooling. In many cases, the owner of the sugarcane plantation assigns areas of the plantation to various families (rather than to individual workers) to cultivate. In such a traditional tenant agricultural system, all family members, including children, work on the plantation. Under the law’s provision of children working with parents, this set up may not be categorized as child labour. Moreover, the law does not define any minimum age to begin work.

Approximately 80 percent of the total population in Negros Occidental are engaged in sugarcane work. There are about 5-10 landlords who own all the plantations in the village, while 80 percent of the farmers in each village are irregular sugarcane workers on these plantations. Without any written contract, they work during the milling season, and only some expect to get employed during the off season. Those who do not have work during the milling season are forced to migrate to the city in search for employment.



Increased price of rice in September 2008.

The farming of sugarcane has been one of Negros’ key industries since the mid 19th century. Prior to the establishment of sugarcane plantations, Negros had a diversified economy including abundant rice production, not only for local consumption but also for export to other islands. At present, no locally produced rice can be found in the market; one rice shop owner explained that all rice is imported from other countries. Since the price increase in 2009, the price of rice did not decrease again. Compared to 2008, when the whole world faced a food crisis, the current price is very high.

With the introduction of the sugarcane plantation system by the British, many self-sufficient villagers were forced to become wage-dependent sugarcane plantation workers.

In other words, subsistence farming was replaced by commercialized agriculture. Since the mid 19th century, sugar has been exported to England amounting to 58 percent of the trade value. Subsequently, during the American colonial period, the sugar industry became the traditional cultivation in Negros, with sugar being exported to the US, at the cost of local child labour and hunger.



Imported rice sold in a local market, Bacolod city.

Unless their parents can cover the school fees and other expenses, children cannot attend school and complete their education. Older siblings feed their younger brothers and sisters by quitting their schooling and selling their labour. Due to the measurement for child malnutrition merely applying to children under the age of six, no one knows or cares if children working in sugarcane plantations are malnourished. In official child malnutrition data, working children are invisible.

Malnourished children in the Philippines are identified by their weight, which is categorized as Normal, Below Normal Low, Below Normal Very Low. One health worker explains how to identify Below Normal Very Low: eight kilograms for two years, 10 kilograms for three years, 12 kilograms for four years, 18 kilograms for five years, 22 kilograms for six years. More significant aspects of child malnutrition, such as nutrition deficiency or micronutrient deficiency are neither identified nor considered in the Philippines. Apart from national nutritional day, July 10, there are no substantial social programs for malnourished children this year. The national nutritional day is a celebration for malnourished children who may be able to get some food once a year. While health workers working in the health centre of each village weigh the children regularly and keep records, there is nothing more they can do as neither the central government nor the local government have any specific plan or policy regarding child malnutrition.

To illustrate, Daisy's two children have been identified as malnourished since the age of one. Both children, living in the village of Old Pablacion, Escalante City, have received nothing but a glass of milk on 13 July 2010 by some health workers. Daisy even had



Daisy and her children

to divide that one glass of milk between her two children. Her older daughter has been malnourished for the past three years. As we can assume now, she would not be identified as malnourished when she turns seven years. She will be just another small and thin girl, as seen all over the Philippines.

Similarly, Alponso and Jainy might have been identified as malnourished when they were under the age of six. Since then however, they grew up and engaged in child labour while being malnourished. Although Alponso said he was not hungry, he enjoyed dinner with us. We prepared a chicken, vegetable soup, rice and coffee. Coffee gives energy to hungry individuals for a while. I told Winnie that coffee would hurt your empty stomach. While a fact, this is useless knowledge for those who feel hunger but have no food at home.

After darkness set in, Winnie and her children returned home. Alponso and Jainy may sleep well tonight, but tomorrow will bring more hard work for Alponso. When can he eat chicken again, and when will sugarcane not be cultivated by the little hands of children in the Philippines?



Winnie, Alponso and Jainy in front of their house.

UNJUST: The mirror to see Asia

Nilantha Ilangamuwa

A reflection on the documentary UNJUST, directed and produced by Josefina Bergsten

What is the point of talking about justice when someone can bribe the police and judges and there is no system to prevent such bribery and corruption? This is a problem that most countries in Asia have to deal with, to one extent or another, making protection under the law unattainable for many common people. The basic principles of liberty are dead in many countries of Asia, resulting in citizens becoming subjects of unjust 'political' elites.

A political oligarchy rules with impunity in countries like Thailand, Sri Lanka, Indonesia, the Philippines, Bangladesh, India, Nepal, Pakistan, the Maldives and Burma, and anyone outside this minority elite cannot count on fair protection under the law. In many of these countries we can clearly observe that the military has replaced religion as the guiding force behind government policies, giving the military undue power and marginalizing religious organizations. Regimes become military cults, while the civilian population suffers without any means of legal protection. As a result of the relation between the military and the ruling regime, justice is inaccessible to the ordinary people. As the Italian writer Joshua Borsi (1888-1915) once explained, "When a judge is unjust he is no longer a judge but a transgressor." This is what is happening in Asia today.

When the law becomes a commodity that can be purchased and justice is an item unknown to all but an elite minority connected to the military, a country is on the road to instability and conflict. In his famous book *The Gulag Archipelago*, Aleksandr I Solzhenitsyn wrote, "If we didn't love freedom enough, and even more--we had no awareness of the real situation.... We purely and simply deserved everything that happened afterward." A similar situation can be seen today in Asia, a mentality created over a long political process by certain governments. As a result, most people in Asia have little or no concept of what freedom really is.

In Thailand, both the 'yellow shirts' and 'red shirts' have held protests against certain governments and each time the military was used to break the protests. Hundreds were killed, many others were wounded, and others are still being detained. The law has done nothing to protect the rights and lives of these civilian protesters and has instead worked to protect those that harmed them in the first place. Extrajudicial killings, honour killings, harassment, killing of witnesses and various other crimes are rampant across Asia.

The relationship between crime and power is as close as skin to bones.

UNJUST, a documentary directed and produced by Josefina Bergsten, reflects on various social circumstances present in Asia today, and is a looking glass through which to see the region clearly. By carefully documenting three stories of human rights violations and the corresponding struggles for justice, Josefina gives a broader understanding of the situations in each of the three countries.

For her work, Josefina was given the Creative Media award by the Asian Human Rights Commission on 27 July 2010, in Hong Kong. “It was four years of work,” she replied to guests attending the ceremony. During her acceptance speech, she noted that the three women she filmed were the bravest women she has ever met, and this courage shines through the entire documentary. Josefina observed the cases from



the bottom and let the victims come out with their own ideas, which gives a unique perspective to the stories, rather than simply interviewing so-called experts or government officials on the subject. It puts a human face to human rights issues.

UNJUST makes a strong link between the top and bottom layers of society. Her three stories explain to viewers the problems facing Asia, as well as their root causes. One of the stories is that of Suciwati, wife of the late Munir Said Thalib, an Indonesian human rights activist and founder of the organization KONTRAS. Munir was poisoned aboard a Garuda flight to the Netherlands in 2004, and since then Suciwati has been struggling to seek out those responsible and bring them to justice.

According to KONTRAS, “The murder of Munir showed that there has been, and continues to be, a political conspiracy involving the state apparatus focused on using violence and intimidation to prevent people from being too openly critical of those in power in Indonesia.”¹

When an Indonesian court decelerated the prime suspect in Munir’s assassination not guilty, Suciwati noted, “The court process that we saw today has lost its way. We have

1. http://www.kontras.org/eng/index.php?hal=prog_ker

seen, we have witnessed, that the trial we have been waiting for has been ripped to pieces by powerful men.”

“I’m just a human being, a mother, a woman. I’m tired but I won’t give up. I’ll have to rest first to recuperate my energy so that I can come back again to fight for justice,” said Suciwati, after the court’s decision was given.

The story from Sri Lanka is that of Padma Perera, the widow of the late Gerald Perera, who was shot dead just before he was due to testify against the police officers charged with torturing him. According to the documentary, “the murder trial against Padma’s husband’s killers, which began in 2006, is still ongoing. The assassin Ajith, who was out on bail, has disappeared and police sub-inspector Suresh, who hired Ajith to carry out the shooting, is back at his job. No one knows when the trial will finish.”

In the film, Padma notes that as the dispensation of justice is delayed by ineffectual courts, justice itself is irreparably damaged. Her story gives a real view of the situation in Sri Lanka, where ordinary people must deal on a daily basis with a corrupt and congested legal system.

Anghkana Neelaphajit is the wife of Somchai Neelaphajit, a respected Thai lawyer who disappeared on 12 March 2004. “Somchai vanished shortly after filing a complaint on behalf of five persons who alleged they were tortured while in police custody. Somchai was the attorney for several ethnic Malay defendants accused of security-related offenses.”²

According to the film, as of June 2010 Anghkana had not succeeded in bringing the police suspects to trial on murder charges. She often travels to Thailand’s Muslim South to assist people who are struggling to get access to the justice system. Anghkana remains hopeful that she will one day find out what really happened to her husband.

The point that struck me at the end of the documentary was that a just war is better than an unjust peace. An unjust peace creates greater social destruction than what a just war might create. As Anghkana said after watching the documentary recently, “I lost everything, even my private life.” This is what millions of people who are victims of the military and its sponsored regimes enjoy today. We are just victims of the system. However, the power of UNJUST is in its message of hope, as retained by the three women in their fight for justice, as well as those supporting them.

2. <http://absolutelybangkok.com/missing-lawyer-somchai-murder-with-impunity/>

The WISE women of Pakistan

The Women's International Shared Experience Project

WISE, the Women's International Shared Experience Project, travelled to Karachi to work with women from throughout the Sindh area who have been raped, sexually assaulted or domestically abused.

Nine women spent 14 days living together and receiving training in video production. Some of the women could not read or write and their confidence had been stripped away from them as a result of the abuse they had faced.

Through participatory learning activities—based on the writings of Paulo Friere—and the use of symbols and touch, the women were able to make a documentary, which tells the story of the women of Pakistan.

Watch the videos about the training:

<http://www.youtube.com/watch?v=gg5bCt4pCgY>

<http://www.youtube.com/watch?v=np3ekERtw-Y>

The women not only planned and filmed the documentary, but also edited it—not a small task for those in the group who had never touched a computer before.

The resulting documentary is a unique look at the issues addressed through the eyes of women who have faced or who are still facing human rights abuses against them each day.

The video has been split into two parts, so that we could upload them in Pakistan—due to ISP restrictions. Please take a look at them here:

Part 1 - <http://www.youtube.com/watch?v=Cr6vRR8Y-oo>

Part 2 - <http://www.youtube.com/watch?v=GHHn5DooORo>



The WISE project will now travel to Jakarta to work with women who have been infected with HIV—either through drug use or through prostitution. Please continue to watch WISE's progress through the following channels:

Youtube: <http://www.youtube.com/user/WISEahrc>

Facebook: <http://www.facebook.com/group.php?gid=95263026695&ref=ts>

Webpage: www.wisevoicesthroughvideo.org/index.html

These pages are updated regularly and we like to encourage the women to interact with our fans on facebook. Leaving questions and comments shows these women that you care and are listening. There are also extra videos posted on these sites taken from the learning process and early interviews with the public on the subject the group are interested in.

In 1999 The World Bank conducted a survey with people living on less than a dollar a day. They asked what was the most important thing to them. The majority answered, above food and water, that access to a voice was the most important thing to them. We are living in a time when this access is possible.

WISE is a programme with an aim to be the catalyst for change via communication—at a grassroots level, through viewing and discussions in local communities; and globally via the Internet.

Press and reviews in Pakistan

Please take a look at this article from the Tribune Express in Karachi: <http://tribune.com.pk/story/31412/%E2%80%98half-face%E2%80%99-brings-9-women-full-circle/#comment-43417>

Tribute to murdered environmentalist Charoen Wat-aksorn

Sor Rattanamanee Polkla

On 22 June 2010, more than 500 people gathered in the Buddhist temple situated at Ban Bor Nok village, Prachuap Khiri Khan district, Thailand. They were gathered here to remember their leader, who was murdered on 21 June 2004. Martyr Charoen Wat-aksorn was a leader of the common folk, particularly popular in Prachuap Khiri Khan for leading the movement against the Bor Nok coal-fired power plant project for a decade.

Six years earlier:

On the evening of 21 June 2004, as darkness was spreading over Prachuap Khiri Khan, one man got off a bus at around 9:30pm at the Bor Nok Crossing, and was in a hurry to get to his house. Little did he know that two persons were waiting for him under the shed of the bus stop, and shot him from the side as soon as Charoen moved towards the crossing. Charoen tried to run, but was again shot from the back and fell down. The two shooters then came close to him and shot five bullets at his face, head and chest. Satisfied that Charoen was dead, they left.

Charoen was a well-known environmentalist and president of the Love Bor Nok Association, involved in saving Prachuap Khiri Khan's environment and leading people against the illegal power plant project in Bor Nok. He was returning from Bangkok on June 21, after the senate hearing into the fraudulent use of public land when he was shot and killed.

His family claim the subsequent autopsy was deliberately botched, and over 1000 villagers took the body to Bangkok for reexamination by the Forensic Science Institute. Under public pressure, the case was transferred to the Department of Special Investigation (DSI)



A monument to Charoen

under the Ministry of Justice, and five suspects have since been arrested. However, the villagers and Charoen's family allege that the investigation has not been done properly; to avoid implicating senior and powerful persons, investigators have claimed his murder as the result of a personal dispute.

A path of struggle

Born on 21 July 1967, Charoen was the eighth son of his parents, and a nature loving boy since childhood. He studied Public Administration from the renowned Rajabhat University of Petchaburi. He came to Bangkok in 1995 and started selling soya milk. When he learned about the proposed power plant in Ban Bor Nok, he moved there and got involved in the movement to save the village. He established the Love Bor Nok Association (a community based organization) to save the village's healthy environment. He made his livelihood there from pineapple trading, but when he realized that the environmental movement needs full time involvement, he wound up the pineapple business. Soon he was recognized as the leader of the movement.



Love Bor Nok flag

The movement against the power plant is the best example of a community based movement. The entire community was involved. One of their events, a road blockade, can be seen as an example. On 8 December 1998, 20,000 villagers came to block the southern highway of Thailand—the country's backbone, linking to southern Thailand and Malaysia. This road blockade became a turning point of the movement, after which every Thai citizen became aware of it.

After this, the government was willing to organize a public hearing, but the villagers had no faith in its outcome and boycotted the entire process. On 10 January 2002, thousands of villagers traveled to Bangkok to hand over a memorandum letter to the Prime Minister of Japan, as the Japanese government was a potential financier of the power plant project. The Thai police made many attempts to stop them reaching the capital, but failed. When the police stopped their buses, they ran towards Bangkok on foot. They ran almost two kilometers, and past every obstruction put up by the police. It was the power of the people that let them through that night, and again they took their struggle to new heights.

Thailand's prime minister at the time then visited the proposed site of the power plants, during which he faced enormous protest and met with thousands of people. He finally said he would take a decision on the Thai New Year, which came and went without any decision being made. He then said he needed more time to reach a decision. Love Bor Nok did not stop its movement and in the first week of May, the prime minister announced that "the plants would be deferred for 2-5 years". This is a huge victory for the people of Ban Bor Nok and Ban Krut.

Living with danger

Charoen was threatened and followed by hit men many times, and three times he survived attempts to kill him, with the bullets missing their target. The proponents of the power plant project tried to bribe him many times, offering USD 300,000 in 1996 for withdrawing from the movement. An opportunist friend, earlier involved in the movement and later joining the power plant company, also attempted to stop him from working with the movement. This brave and nature loving man did not lose his path however. When his house was burnt by some men from the power plant company, Charoen stayed in a temple, where people tried to guard him 24 hours a day.

When the power plant project was stopped, Charoen married Ms Krarok, and tried to start a new life. He opened a small nature friendly resort in Ban Bor Nok. On 21 June 2004 he was murdered. On June 22, thousands of people marched once again to Bangkok, this time with Charoen's dead body and demanded for an investigation into his murder by the DSI. They also demanded to keep his dead body for up to 100 days. The DSI investigated the case and brought the murderers to court, but only one man was found guilty. He is currently in prison awaiting an appeal court decision, while the others were freed due to a lack of evidence.

After losing Charoen, Ms Krarok was recognized as the leader of the Love Bor Nok Association. She said that she does not have enough experience, and therefore a steering committee was appointed to take leadership of Love Bor Nok.



Krarok at their resort 'See Whale Kitchen'

Love Bor Nok continues to work hard; they are the people who made history and who fought to save their natural environment. They organize an annual commemoration of Charoen's death, and on this day they audit their past year's work and decide upon plans and activities for the coming year.

Charoen is still alive in peoples' hearts and in the spirit of Bor Nok.



Seminar on 'national development in the south and the climate change problem'



Exhibition at the seminar

Request to intervene on complaint of severe torture by Yangon police

An open letter to the UN Special Rapporteur on Torture by the Asian Human Rights Commission (AHRC-OLT-009-2010, 4 August 2010)

Professor Manfred Nowak
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
OHCHR, UNOG
CH-1211 Geneva 10
SWITZERLAND

Dear Prof. Nowak

MYANMAR: Request to intervene on complaint of severe torture by police

The Asian Human Rights Commission (AHRC) is writing to you further to our previous open letter (AHRC-OLT-001-2010) concerning the extensive use of torture by police in criminal cases in Myanmar.

The AHRC has continued to receive numerous detailed reports of torture committed to persons in police custody in Myanmar, ranging across all types of cases and with victims of all ages and both sexes. Recently, we received the details of a complaint of very serious torture that has been lodged with the Minister for Home Affairs, who oversees the police force. To date the complaint has not been acted upon. As the details of the complaint have already been publicized in detail in media broadcasts, we are taking the opportunity to bring it to your attention and to call for your intervention.

According to the complaint, police led by Inspector Aung Soe Naing and Sub Inspector Myint Thein of the intelligence unit attached to the Yangon Divisional Police Force arrested a news periodical editor, Nyi Nyi Htun, 47, on 14 October 2009 and took him to the divisional headquarters where 16 officers, including the two named, tortured the detainee continuously for six days by working in pairs, throughout which time he was not fed and given only a small amount of water.

The police allegedly tortured Nyi Nyi Htun by hitting him in the face and on the cheeks with shoes; kicking and stomping him on the head while his hands were tied with rope at the rear; forcing him to kneel on gravel for 30 minutes at a time; squeezing his fingers together with ball pens between them; shoving a police truncheon into his anus; and, beating him with truncheons on his back, chest and feet.

Throughout this time they accused him of planning to bomb a number of prominent locations, including a reservoir in the east of the country, the Central Bank and the American Center in Yangon. Nyi Nyi Htun denied the allegations against him.

Importantly, after the six days were up, Nyi Nyi Htun was sent to the Special Branch facility at the Aungthapyay interrogation camp, where officials reportedly took an official record of his injuries, including through photographs and by having a doctor do a medical examination. Therefore, evidence of the torture should be available to senior persons in government were they to request it. Thereafter, the victim was transferred to the Insein Central Prison to face trial.

Although Nyi Nyi Htun made the complaint in May 2010, according to recent news there has been no action on the complaint to date. Furthermore, when he was brought before a judge of the Seitgan Township Court sitting at a special hearing inside the Insein Central Prison where he is being tried for four alleged offences he also made the same allegations and informed the court that the Special Branch police who took the official record of his injuries could be called as witnesses. However, to date again the court has failed to take any action on his allegations, and according to his lawyer, he has directed that a second complaint be sent to officials at the national level.

Therefore, in light of the detailed allegations made in this case, the determination of the victim to pursue the complaint, and his claim that the police took records of the injuries that he sustained due to torture, we request that you take up this complaint with the Government of Myanmar as a matter of urgency.

At the same time, we note that the techniques of torture and subsequent processing through the criminal justice system that this victim has described are consistent with those in many other accounts that speak both to the institutionalized and systemic character of torture in policing in Myanmar, and with the complete inaction of the judiciary and other parts of the state apparatus in response to what is manifestly a deep, widespread and profoundly damaging practice. We would therefore urge you also to address these aspects of the incidence of torture in Myanmar in any communications that you have with the Government, and frame these in terms of the state's abject non-compliance with international norms, both in terms of institutional practices and in terms of the absence

of any legal and institutional framework to delimit, let alone prohibit, the use of torture in police investigations.

We look forward to your prompt intervention in this matter.

Yours sincerely

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

Cc:

1. Tomas Ojea Quintana, UN Special Rapporteur on human rights in Myanmar
2. Gabriela Carina Knaul de Albuquerque e Silva, UN Special Rapporteur on the independence of judges and lawyers
3. Homayoun Alizadeh, Regional Representative, OHCHR, Bangkok, Thailand

Policing in Nepal

Interview with Durga Sob

Durga Sob is a prominent Dalit women's advocate and the chairperson of the Feminist Dalit Organization (FEDO). She speaks against torture and bad policing in Nepal to the Asian Human Rights Commission.



How is the relationship between the citizens and the police in Nepal?

The relationship between the citizens and the police is not good. The police are supposed to act for the security of the state and the citizens, but they are not able to maintain a close relationship with the citizens. The police and citizens should share the relationship of a finger and a nail, but it is not like that. The government was not facilitating the development of a close relationship between the two. Because of the 10-year-long conflict our country just came out of, the behaviour of the police is not good enough. The citizens were worst hit by the attitude and the behaviour of the police. The situation was so bad that people used to shake in fear when they saw police officers, even though they have not done anything wrong.

Seeing police torture and the cases such as the rape case of Suntali Dhami, the Bardiya killing, and the Sanu Sunar case, it is almost certain that the police administration, instead of safeguarding and providing security to the citizens, are rather the promoters of impunity in the country. We must also not forget that although the trend is slowly changing, the police are still in the grip of and working under the direction of a handful of powerful people, which is quite the opposite of their mandate. The existing structure of the police administration needs to become more democratic.

So what do you think of the relationship between citizens and the police?

Citizens are the supreme power in a country. There is no objection to this, but shamefully the common citizens are being smothered by people in power. Worst and most critical, is the condition of Dalits, especially Dalit women. Dalits are hardly enjoying any rights.

The police is one of the state-led mechanisms whose major role is to provide security to the citizens. So the police should be totally responsible before the people, committed to promote the citizens' rights and to take responsibility to protect their security. Any citizen and the police should share a familial relationship. While approaching the police, the citizen should feel a sense of justice. The citizens should also change their pre-set attitude ('police are always like this') towards the police. The government should also create mechanisms which allow the citizens to have easy access to the police.

What do you think of police use of torture?

Nepal has signed numerous international covenants and conventions. And of course the police should not torture anybody in custody on the pretext of investigation and getting information. But here in Nepal, we find police beating the person till he or she dies. We keep on receiving information of custodial deaths. Sanu Sunar of Lalitpur district is a recent example.

The police continue to beat arrestees even after they confess to the crime. We cannot think of worse foolishness than this. It seems that the police enrolled themselves in the job solely to beat citizens. It should not be like that. We have to tell the police that in any criminal offence, they should follow the legal way to punish the culprits, which will raise people's sense of security, particularly when they are innocent.

Do the victims feel safe and secure after filing their cases with the police?

Still citizens do not have direct access to the police. Very few cases reach the police. Talking about our society, people find it better to keep their sufferings to themselves, than to disclose them. There is the thinking that if you go to the police, the matter would become more problematic. I see the mistake of both the citizen and police in this. It has happened because of the unfriendly behaviour of the police. There is also the thinking that going to the police may invite unnecessary talk and stigma. The society also views someone differently when they are discovered entangled in police affairs. Ultimately this results in very few cases reaching to the police. And this is also because the victims do not feel any sense of security with the police. To change this, the police should play a helping role. They should respect and help the victims who approach them.

For example, if someone is accused of a theft, the police behave as if the person is guilty from the very beginning. They do not even investigate and try to verify the information. Then the police start beating the suspect mercilessly; how can one have a sense of security in this environment?

People, most of the time, try to avoid going to the police station. They do not feel that they will get any justice there.

What do you think about the domestic violence law in the country?

There is a domestic violence law. But in reality, it has not been implemented properly. There are loopholes in it which should be addressed to properly address the problem.

What do you think of the police administration in totality?

The police lack the understanding and respect of the citizens. So now it is time for us to make the police become aware of those issues as we do not have any other option than this. We need the police so it should be developed as an institution which respects common citizens and is ready to help them when they need it.

The Khairlanji massacre is more than another murder story

Avinash Pandey

The recent verdict of the Bombay High Court in the Khairlanji massacre case, sentencing all the accused to life imprisonment, could have gone a long way in restoring ordinary people's faith in India's justice system and legal framework. The verdict could have marked a historic juncture in the life of the nation, announcing that the rule of law has been firmly established despite the inadequacies of the justice system in both crime investigation and trials. It could have ensured that Dalits and other underprivileged groups will face no discrimination, at least within the judicial system.

For all of these reasons, the verdict was long awaited. Unfortunately, in its final coming, it proved highly inadequate and farcical, rightfully outraging civil society. The outrage is highly misplaced however; the failure of justice is not rooted in the commuting of the death sentence of six convicts into life terms for twenty-five years, but in seeing their behavior as mere revenge killing.

Capital punishment is unacceptable in any civilized society, and it is quite painful to see some of the most genuine civil society members decrying the commuting to life terms and demanding for the death sentence to be awarded. Retributive justice is no justice, and no studies have confirmed any deterrence effect of capital punishment. Rather, statistics bear out that capital punishment is used mostly against the poorest and weakest sections of society. It is an official version of mob-lynching, with the poorest of the Indian society being the worst victims.

Therefore, the death sentence announced by the district court in 2008 (to be ratified by the Bombay High Court) in this case was no victory for social justice. Apparently convinced by the prosecution's shoddy investigation and poor arguments attempting to pass off the case as mere revenge killing, the judge held the case as 'revenge murder' and hence refused to invoke the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The travesty of justice lies here; the 2006 Khairlanji massacre was not just another among the 32,481 reported cases of murder tucked in the pages of the statistical records of the National Crime Records Bureau. Nor was it just one of 19,348 reported cases of rape (though the charges of rape were not invoked by the court). The gravity of the case did

not lie in the gory instance of a mob bludgeoning an entire family to death while also raping women and mutilating their bodies.

The case was in fact a massacre to uphold feudal values in a modern, democratic India. The perpetrators did not massacre the family in a fit of rage; their anger was not momentary. It did not emanate from any personal enmity; the family had not done anything to provoke or annoy them. The only 'crime' the Bhotmanges had committed, was their effort to escape the low social status ascribed to their untouchable caste. Trying to come out of the dehumanized existence Dalits have been condemned to for centuries was enough provocation for the killers belonging to the dominant castes.

That the prosecution tried its best to destroy all evidence relating to caste based atrocities and did not apply the Scheduled Castes and Scheduled Tribes Act shows the systematic and institutionalized nature of casteism. Moreover, that the massacre took place in full public view without any opposition, indicates how deeply ingrained the ideology of caste is. Not holding these spectators, complicit in the crime by acts of omission at least if not commission, accountable in a court of law further reveals how state institutions tolerate caste-based atrocities. The case emphasizes that it is in fact the pre-modern, barbaric and regressive social structure of caste that rules the country under its democratic façade, and that the idea of modernity is a mere superimposition upon this primitive mode of social organization. It reminds us that Indians are decades, if not centuries, away from achieving the goals set on the night we made a tryst with destiny, of becoming a sovereign, secular, socialist and democratic republic.

The Khairlanji massacre is the negation of the very idea of India and its democracy. It reveals the decayed and deficient democracy we have evolved into. Unfortunately, it is not isolated case of rogue elements within the Indian society. Rather, it is one among many incidents, such as in Jhajjar, Haryana where five Dalits were lynched on the suspicion of trading cows, to Patan, Gujarat where a Dalit girl was repeatedly gang raped and intimidated in a teacher training school.

The response of the Indian state and civil society has remained the same in all these incidents; of outrage, making much noise, and then forgetting the issue until the next atrocious incident occurs. And precisely because of that, Khairlanji should shake us out of our deep slumber and make us reflect, and act, to put an immediate end to caste based atrocities. We must deal not only with the perpetrators, but also silent spectators approving the incident, as well as crack down on illegal institutions like 'khap panchayats' legitimizing caste. That would serve as a bigger deterrence than the death sentence, as caste communities would get to know that all of them would be punished, not only the 'heroes' carrying out their dictates!

Lest we forget, killing the demon of caste was the primary wish and clarion call of Dr BabaSaheb Ambedkar, the father of our constitution.

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Disappeared journalist's wife declares loss of faith in Sri Lanka's judicial process and turns to supernatural forces

Statement issued by the Asian Human Rights Commission (AHRC): AHRC-STM-157-2010, 26 July 2010

Sixth months after the disappearance of her husband, Prageeth Eknaligoda, Sandya Eknaligoda and her son held religious ceremonies at the famous Kalli Amma Kovil, a Hindu temple at Modara, Colombo on 24 June 2010. Mrs Eknaligoda prayed to supernatural forces for help in finding the whereabouts of her husband, who disappeared on 24 January 2010. Sandya has repeatedly declared that she holds the government responsible for her husband's disappearance.

Her voice, praying to the Kali Amma on behalf of her husband, was played over some media channels. After the religious event she told the media that her plea to the authorities to investigate her husband's disappearance has not brought about any positive results. She said she has lost faith in the authorities and will from now on hold religious ceremonies all over the country to pray for the help of supernatural forces.

Over the last six months, several government spokespersons have talked to the media on this issue, including several ministers. They all promised a speedy solution to the problem through effective investigations. The Inspector General of Police and his spokespersons have also made similar promises. However, while these assurances were being announced, the government propaganda machinery stated that Prageeth Eknaligoda had not in fact disappeared, but was in hiding and would soon return.

Sandya Eknaligoda's declaration of no faith in the legal process echoes the general feeling of many persons. The failure of the legal process is a result of the general totalitarian tendency in the country where public institutions are prevented from functioning in a normal manner. Under such circumstances people turn to supernatural forces or to the underworld to resolve their problems.

The government claims that Sri Lanka has an effective judicial system and does not need any inquiries from international agencies about human rights abuses. However, people turning to supernatural forces for help indicate that people have no faith in the local systems of justice administration.

Recognizing the evils of a 'non-rule of law system': Changing ourselves and our government

Kishali Pinto-Jayawardena

Book review of Sri Lanka: Impunity, Criminal Justice and Human Rights, by Basil Fernando, published by the Asian Human Rights Commission (March 2010).

For years, much of the work by human rights practitioners in the Asian region had been directed towards challenging their governments. To that end, much energy had been expended on theoretical critiques of what had gone wrong with constitutions, laws and systems of governance. The fact that theoretical critiques had to be buttressed by solid documentation on the ground or ordinary peoples' experiences with rights was recognized as important. However, not much thought was given to the manner in which that documentation could influence, and most importantly change, the basic nature of the theoretical critique itself.

Increasingly though, it is becoming evident that this interaction is core to the success of human rights activism. Challenging governments alone will not do. Rather, a transformative change needs to take place in the very manner in which human rights activism is engaged in, if the process is to result in concrete changes in our societal environments.

The most recent book authored by Basil Fernando and published by the Asian Human Rights Commission (AHRC), appropriately titled *Sri Lanka: Impunity, Criminal Justice & Human Rights* makes an important contribution to this process of transformative change. Its focus is directed not only at the failings of governments, but also at encouraging critical thinking on the need to change strategies of human rights activism within the human rights community itself. Its contents are especially important to Sri Lanka and merit reflection one year after the ending of active war in the North and East, when the deterioration of civil liberties has been aggravated and not lessened.

The direction that the book takes is hardly surprising, considering that strong advocacy based on ordinary peoples' experiences with the systems and procedures that are supposed to protect them but seldom do, has been an unfailing characteristic of the AHRC's work during previous decades. In that regard, it has been successful in creating a strong documentation base of endemic human rights violations and failures in laws, systems and procedures that a hostile government has not been able to break due to its fundamental fact-based approach.

What this particular book does is to collate some of these experiences and then take the analysis to a separate level. Its consistent warning is that there is little effective point talking of the protection and promotion of human rights in the absence of serious institutional reforms focusing on the police, the prosecution and the judiciary. A mere focus on education and training has no impact where the institutional defects are so great as to subvert the very meaning of the institutions that exist. For example, as the author reminds us, "human rights education being imparted to state officers is of no value when the institutions meant to protect human rights are so politicized that they work to violate the rights of certain categories of persons". This is equally true of national human rights commissions. Where fundamental flaws in justice institutions leave little room for these commissions to work towards human rights protections and where these commissions cannot take the place of the police, the prosecution and the judiciary, how can we expect them to succeed by any stretch of the imagination?

The analysis compels the reader to confront the unpleasant fact—as posed through ordinary persons' experiences with the law and the legal system—that Sri Lanka has become a 'non-rule of law' system. In other words, it is not that theoretical constitutions, laws and practices do not exist in the country; rather, they do exist but are so subverted and deprived of actual meaning that the reality is as if they do not exist in practice. This is an important distinction between what prevails in non-rule of law systems and that in flawed-though-functioning rule of law systems.

The difficulty lies in comprehending the extent of the gravity of institutional failure in a 'non-rule of law' system. In flawed rule of law systems, individuals and groups are able to challenge injustice (perceived or actual, as the case may be) without fear of physical or other harm to oneself or their loved ones. In 'non-rule of law' systems, this is not possible. Legal remedies do not have much meaning. Critical remedies such as habeas corpus (producing the body) are rendered without value, as the author specifically states, by "delays in adjudication, witness intimidation and the destruction of evidence". Judges become chronically lax in their duties.

The primary reason custodial deaths go unpunished in Sri Lanka for instance, is due as much to the laxity of the magistrate as it is to the excessive actions of the police. In

many cases, the deaths are due to police torture of the suspects, disguised in fictitious explanations such as that he was attempting to run away or that he was resisting arrest. However, magistrates do not assume a very pro-active role in the stringent questioning of police actions in these circumstances. On the contrary, a verdict is entered of justifiable homicide without any questioning of police actions.

Though the law and judicial interpretation thereof specifies that reasons be given for arrest, this caution is not observed in practice. Family members are not informed of the arrest and are often denied access to detainees. They are unable to obtain legal representation for the suspect due to financial difficulties in retaining lawyers and as a result, the police are encouraged to fabricate stories of involvement in grave crimes and request remand from the magistrate. Sometimes, linkages between the police and criminal lawyers prevent a suspect from being represented adequately.

Further, due to the magistrate not questioning the police adequately, fabricated stories serve to put a suspect unjustifiably in remand. Even if the suspect is granted bail, this serves little purpose as an adequate surety cannot be furnished. A further problematic development is the production of a suspect at the home of a magistrate or an acting magistrate, where in many cases decoys or impersonators are produced.

While public pressure to effectively address the high rate of crime is manifested, the response on the part of the police department is not to engage in systematic and sustained law enforcement efforts but rather, to allow police officers to penalize marginalized individuals who cannot defend themselves or to persecute persons accused of nothing more than petty theft. Ironically, many actual major criminals escape without sanctions; the linkages between the police and the underworld, including drug barons, are reported commonly in newspapers. In several cases documented by activists, individuals have been beaten up for refusing to give money to police officers by way of bribes for carrying on illicit liquor sales; when these sales were stopped and the bribes ceased, they were subjected to abuse.

In 'non rule of law' societies, vibrant public opinion is severely limited. Newspapers and the electronic media are restricted. Electoral processes do not result in change of government; rather, they are used by authoritarian regimes to consolidate their own power.

Potently, the author warns that in this type of situation, there is no point in holding up superior models of governance and merely pontificating that they should be adopted. Such an approach is "intellectually evasive and morally timid". The mere restatement of ideals cannot change existing realities. On the contrary, the approach of human rights practitioners should be directed towards documenting, criticizing and articulating the

problems of “brutal policing, politicized prosecutions, corrupt judiciaries, authoritarian political systems and restricted freedom of expression” from every day experiences of ordinary people and bringing this debate closer to the very persons who have to cope with these problems as everyday occurrences in daily life.

Consistent themes that are dealt with in this book include, the lost meaning of legality, the predominance of the security apparatus and the superimposition of emergency law over the ordinary law, the disappearance of truth through propaganda, the superman controller (for which, read the Executive President), destroyed public institutions and the zero status of citizens. These are all themes that are intensely familiar to Sri Lankans in the current political context.

Considered reading of the contents of this publication will be of immediate value not only to Sri Lankans but also to South Asians grappling with their own peculiar problems of how best to confront and minimize the democratic deficit in their own countries.

New webpage on Thailand's state of emergency

Press release issued by the Asian Human Rights Commission: AHRC-PRL-017-2010

(Hong Kong, July 30, 2010) The Asian Human Rights Commission (AHRC) on Friday launched a new webpage on the state of emergency in Thailand.

The webpage, 'Thailand State of Emergency 2010', features a map showing provinces where the emergency remains in effect, and carries links to AHRC material as well as outside resources on the emergency decree.

The webpage can be accessed at: <http://thailand.ahrchk.net/emergency2010/>

"It looks as if the use of a state of emergency is set to become a permanent feature of political life in Thailand, to the detriment of human rights and the legal system," Basil Fernando, director of the Hong Kong-based regional group said.

"Therefore, we decided to set up this page to keep a track of it, and to contribute to discussion on its consequences," he said.

"There is a huge amount of global interest in what is going on in Thailand and the government should not think that it is going to dissipate just because people are not getting shot on the streets of Bangkok anymore," Fernando added, saying that he hoped the AHRC site would be one among many carrying news and analysis of the situation there.

The webpage is the second of its type that the AHRC has established. In 2005 it set up a page on the emergency decree in southern Thailand, which has since been renewed 18 times. A link to that site is available from the new page.

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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