

Ethics in Action

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Cover photo (left to right):

A woman and her child in Mugu District

Woman preparing spices, Mugu District

Couple collecting stones to build houses, Mugu District, Nepal

Source: Ju Jin, May 2011

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CONTENTS

International Day for Street Children opportunity to review situation in Pakistan

Amir Murtaza 3

Corruption in Nepal: Curse or crime?

Om Prakash Sen Thakuri 6

Gwangju prize laureates against Jeju Island navy base

Statement by a group of Gwangju Human Rights Prize laureates 16

Prison visits in the Philippines

Human Rights Correspondence School 18

GENDER

Asia: Gender discrimination and violence hamper equity

Asian Human Rights Commission 28

Pakistan's religious minority women facing double discrimination

Bushra Khaliq 31

DISCRIMINATION

Burmese religious elder imprisoned for peaceful practice of faith

Urgent Appeals desk 33

Fake prophetess: How a lady fooled the Muslim leaders

Baseer Naveed 35

International Day for Street Children opportunity to review situation in Pakistan

Amir Murtaza

The International Day for Street Children was celebrated for the first time on 12 April 2011. The success of the International Day for Street Children 2011 provided a platform to discuss and deliberate the issues of millions of these vulnerable children all around the world, including Pakistan. The International Day for Street Children was launched in 2011 by the Consortium for Street Children (CSC) in more than thirty countries, with a view to create a broader awareness about the issue. In 2012, the theme for the day is “Challenging Perceptions”. The day is celebrated by street children, child rights activists, social workers, NGOs, policy makers, and individuals across the globe.

Occasions such as the International Day for Street Children have given us the opportunity to review the situation and adopt more practical strategies to tackle the issue of street children in Pakistan, especially in cities like Karachi and Lahore. It is a fact that the number of street children in big cities of Pakistan, such as Karachi and Lahore, have grown in recent years. Though there is no official data available regarding the number of street children, it is widely assumed that thousands of children are living and working on the streets of Pakistan, without any proper protection mechanism.

A large portion of Pakistani society consists of children; however, they fall in the category of vulnerable sections of the society. The ratification of UN and international protocols and conventions, and the enactment of domestic legislation for the protection and promotion of child rights have not made much change in the situation as it has been confirmed that children, especially vulnerable groups such as street children, face serious challenges in the area of security and development.

At the tender age of seven, Tanoo found himself at Karachi Railway Station, where his father deserted him, to face the harsh realities of life. Tanoo is now thirteen and understands the realities of daily life. Being an unprotected child living on the streets of

Karachi, Tanoo faced all sorts of violence, including physical, sexual and mental. “Life on the street is not bad as you can easily get delicious food from charities established in the city; however, night time always frightened me,” said Tanoo.

His initial days on the streets were terrible, as he was not able to find any safe place to spend the night. Later, while realizing the grim realities of the life on the streets, he joined a local gang of street kids. “At one night when I was trying to sleep under the board of a newspaper cabin, I suddenly realized that someone is rubbing my back. He was Raja, leader of a street children gang at a local bus station in Karachi. I tried to resist, but he placed a knife on my back,” Tanoo recalled.

Living in a group was a good experience, but Tanoo found it difficult to get some work to bear his daily expenses. “I was always surprised how some of my fellows managed to earn good money despite the fact that they don’t do any work.” His curiosity ended when one day Nata, his fellow group member, introduced him to Basher, a local milk supplier. Basher invited him at the backside of his milkshop and gave him one hundred rupees. “It was not at all hard work and I got a good amount.” Since that day, Tanoo has never been short of money. However, once police personnel caught him when he was with his regular friend at a deserted park. The policeman took some money from his friend and took Tanoo with him at a nearby hotel. “I really paid a very heavy price, and for the next two days was not even able to walk,” Tanoo said.

Dr. Ali Murtaza, a Public Health Expert, observed that street children are a reality and a complex problem. In the last decade their number has increased many folds, poverty and illiteracy being the two foremost reasons. Influenced by a push or pull factor these children seek opportunities outside the home environment or parental control. But their dreams are shattered very quickly once they face the naked brutalities of the real world. Transition from family life to street life puts all sorts of pressure on these children, and in order to survive they end up doing all kind of jobs, drifting from one place to another. This vulnerability exposes them to take drugs as an outlet. It was also observed that most of these kids are aware of their problems but are usually coerced by their friends to continue with their habits. A major reason for this persistence is the children’s activities at night. Being the most vulnerable time, children are usually carried away with natural desires or social pressures.

Dr. Ali Murtaza further said that there was some evidence that children spending the nights either at home or under some kind of supervision, were at significantly lower risks of drug addiction and sexual exploitation. Though different government departments and non government organizations are presently running some good programs, this study found that visits to a drop-in center usually has no direct or lasting effect on the drug addiction of a child. Though there have been some success stories, for larger benefits

there is a need to devise a holistic and prolonged approach for providing shelters to these children over a significant time so as to properly rehabilitate them in society.

Thousands of street children are living and working on the streets of Karachi, Lahore and other big cities. Due to their vulnerability, these children need to be given protection and introduced to an environment that facilitates their basic needs. Additionally, a child's right to life, security and health facilities should be accepted, and the government and non-government entities should introduce community led care and residential facilities for these children. There is also a need to orient political will and allocate resources to the structured development of child rights-based comprehensive prevention policies as outlined in the UN Guidelines for the Prevention of Juvenile Delinquency. Involvement of all stakeholders including government, non-governmental organizations, donor agencies and street children is essentially required to solve this problem on a sustainable basis.

Corruption in Nepal: Curse or Crime?

Om Prakash Sen Thakuri

“Ghus linya ra dinya dubai deshka thula satrubun”

“Both bribe takers and givers are the worst enemies of the nation”.

--King Prithivi Narayan Shah

This stringent attitude towards corruption was expressed by late King Prithivi Narayan Shah, founder of new Nepal 250 years ago. Unfortunately, the following generations did not learn from him. Although Nepal modernized and became a Republic in 2008, corruption is a widespread phenomenon. Government promises to establish good governance, rule of law, development, peace and prosperity have gone unfulfilled. The ‘zero tolerance’ policy on corruption has brought no substantial changes.

The annual report of Transparency International (TI) on the perception of corruption index has listed Nepal 154th¹ out of the 183 countries around the world it assessed. Nepal was ranked 121st in 2008, and is the lowest placed South Asian country after Afghanistan. Earlier this month, the Prime Minister shamelessly admitted that corruption is rampant in Nepal.² The Auditor General’s Annual Report for 2011 brought to light the extent to which money laundering takes place in the government sector; from the total Rs 29,91,4,000,000 of tax collected, some Rs 1,26,95,00,000 (approximately USD 15, 868,750) was not deposited in the state coffer during the last fiscal year 2010/11.³

People are deeply frustrated with the failure of the state and legal mechanisms in place to curb corruption. On many occasions, I have heard people express their frustrations by saying that, *“this land is cursed by a chaste widow, so nothing good can happen here”*. This is in reference to the belief that the widow of famous Nepalese reformer Bimsen Thapa, cursed Nepal. Bhimsen Thapa committed suicide after falling prey to a political

1. See http://www.tinepal.org/CPI_press_release2011.pdf

2. ‘PM Bhattarai: Corruption has crossed tolerable limits’, Nepal Horizon news, <http://www.nepalhorizons.com/news/english-news/pm-bhattarai-corruption-has-crossed-tolerable-limits/>

3. See report at <http://www.oagnep.gov.np/>

conspiracy. He cut his throat with a piece of glass in jail when he heard that his wife was being paraded naked around Kathmandu city.

Historical events lend support to this superstition, because Thapa's demise was followed by the 104 year-long rule of the Rana Oligarchy (1846-1953). Rana rulers infamously used the state coffer as pocket money and kept the people in the darkness of illiteracy, poverty and religious dogmas. During the reign of Rana, the gap between the elite and the poor expanded and a number of communities were marginalized. In those times, corruption was hidden from the public. At present, corruption cases are brought to the attention of the public through media exposure. In present day Nepal, people are frustrated because the impunity which protects the corrupt is apparent.

While corruption is a criminal offence in Nepal, the Nepalese people are forced to bribe government officers if they want to receive official services. Corruption happens at all levels of the government, from the smallest units such as the local Village Development Committees, all the way to the top Ministries in Kathmandu.

Corruption and bribery are routine crimes committed by senior officers and powerful political leaders, and raising one's voice against them is difficult.

Recently, Nepal's Commission for Investigation of Authority (CIAA) has said that dozens of corruption complaints are lodged against the five sitting ministers,⁴ including Deputy Prime Minister and Minister for Home Affairs Bijaya Kumar Gachhadar on charges of amassing money and property in transferring high profile officers in plummy posts. Health Minister Rajendra Mahato, Physical Planning and Works Minister Hrydesh Tripathi, Irrigation Minister Mahendra Yadav and Forest Minister Wakil Musalman are among the others against whom complaints are filed.

What took place on 29 February 2012 is only one example of the corruption prevailing in Nepal. On this day, the personal assistant to the Forest State Minister was caught red-handed taking bribes from the poor people of Mugu, a remote district in Nepal.⁵ The police later seized a recorded phone call made by the Forest State Minister himself, where he was directly demanding a bribe from the Mugu people. Another case of corruption took place a few months back in the village of Sitapur Village Development Committee (VDC) in Siraha district. Here the villagers staged a hunger strike to denounce the corruption committed by the VDC Secretary. Despite their hunger strike and written

4. 'Five minister under CIAA scanner', *Ujyaalo Online*, 24 February 2012, http://unn.com.np/index.php?pageName=news_in_english_details&cid=4058.

5. 'Minister's PA caught red-handed taking bribe', *ekantipur.com*, 29 February 2012, <http://www.ekantipur.com/2012/02/29/top-story/ministers-pa-caught-red-handed-taking-bribe/349748.html>.

complaint, the Chief District Office and Local Development Officer were unwilling to investigate the case and did not take action against the guilty. Instead, the secretary was merely transferred to another VDC. More than 160 high profile corruption cases are pending before the Supreme Court.⁶

While summarizing each individual case would fill up volumes of books, a few high profile corruption cases which have made headlines within the last few weeks should be mentioned here. On 2 March 2012, a newspaper reported that the Minister for Agriculture and Cooperatives Nanda Kumar Dutta was involved in the illegal export of betel nut to India, to the value of an estimated 900 million rupees.⁷ A few days later, Under Secretary at the Foreign Employment Promotion Board Murari Nepal was arrested on the charges of embezzling Rs 40 million (USD 50,000) while serving as a Local Development Officer (LDO) in Bara district.⁸

The Sudan scam is another black smear on the face of Nepal, where a number of high profile police officers, including the Inspector General of Police, were convicted and sent to jail on charges of corruption amounting to nearly Rs 290 million (USD 36 million).⁹ The corruption occurred in connection to a procurement of Armed Personnel Carriers and logistics for the personnel deputed for the peacekeeping mission under the United Nations flag in Darfur, Sudan.¹⁰ However, the Commission for the Investigation of Abuse of Authority (CIAA) did not file a case against then Home Ministers Bhim Rawal, Bam Dev Gautam and Krishna Prasad Sitaula and then Home Secretaries Govinda Kusum and Umesh Mainali, despite the parliamentary committee's recommendation and huge public pressure. The investigating committee reported that they had been threatened while investigating the case, but did not disclose who had threatened them.¹¹ It is still not clear to the committee and the Nepalese public why the Home Ministers and Secretaries have not been prosecuted.

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6. Bimal Gautam, 'SC anti-graft strategy to clear case backlog', *Republica*, 25 May 2011, http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=31513.
 7. 'Minister Datta aids illegal betel nut export to India', *Republica*, 5 March 2012, http://www.myrepublica.com/portal/index.php/ads/rss.php?action=news_details&news_id=32501.
 8. The CIAA found that the former LDO was involved in doling out money to local politicians and consumers groups without following government guidelines and embezzled development budget and budget for Parliamentarians' Development Fund.
 9. 'Sudan scam: Special Court hands down jail sentence, hefty fine to three former IGPs, agents', *Nepal News*, 13 February 2012, <http://www.nepalnews.com/home/index.php/news/2/16676-sudan-scam-special-court-hands-down-jail-sentence-hefty-fine-to-three-former-igps-agents.html>.
 10. Ex-IGPs Om Bikram Rana, Hem Bahadur Gurung and Ramesh Chanda Thakur were sentenced to a two-year jail term each and fined Rs 170.6 million, Rs 64.8 million and Rs 40 million respectively.
 11. 'Gyawali puzzled CIAA failure in dragging Nepal Home Ministers in Sudan scam', *Telegraph Nepal*, <http://www.telegraphnepal.com/headline/2011-06-10/gyawali-puzzled-ciaa-failure-in-dragging-nepal-home-ministers-in-sudan-scam>.

Politicization of crime

When politicians are held accountable they protest and claim that they are being targeted for their politics, as in the corruption case against a former minister. In 2002 the CIAA filed a corruption case against the incumbent (now former) Minister for Information and Communication Jaya Prakash Prasad Gupta.¹² In a controversial verdict passed in 2007, the Special Court acquitted him due to “insufficient evidence”. The CIAA appealed to the Supreme Court.

Overtaking the verdict of the Special Court, the Supreme Court on 21 February 2012 found Gupta guilty of having “accumulated money and property from unknown sources while holding public offices in different capacities since 1992”. The Supreme Court ordered him to be fined Rs 8.4 million (USD 100500) and to be sent to jail for 18 months.

After the verdict Mr Gupta tried to ascribe his crime to political circumstances: “This is not punishment for me but for the movement that I have launched.”¹³ He was referring to the political nature of the Madhesi movement. “I have been penalized for what I did in the past, and what I have been doing now is for the Madhesi people and to forward the Madhesi cause,” he said. Gupta’s political party, MPRF-R, supported his claim that he was being sentenced for his political activities and not for the crimes he committed, and decided to let him remain the Chairperson even after his conviction.¹⁴

General Secretary of the MPRF-R, Atmaram Sah, commented that, “The apex court’s anti-Madhes sentiment reflects since the verdict on the oath of the Vice-President, voters’ registration, integration of Madhesi youths in the national army, citizenship and postal road to Gupta’s case.” Such comments by a national political leader may provoke racial hatred among the communities of Nepal. There were also reports of Gupta’s henchmen chanting against the verdict in his support. Criticizing and chanting against a court decision in public comprises contempt of court. Such acts should be prosecuted in order to discourage future recurrences. Moreover, such demagogic tactics are dangerous, because they appeal to the emotions of the people and pressurize the government.

12. ‘CIAA arrests under-secy Nepal for misusing Rs 40 million’, *Nepal News*, 5 March 2012, <http://www.nepalnews.com/home/index.php/news/19/17130-ciaa-arrests-under-secy-nepal-for-misusing-rs-40-million.html>.

13. Kiran Chapagain, ‘JP Gupta jailed for graft, fined Rs 8.4m’, *Republica*, 22 February 2012, http://myrepublica.com/portal/index.php?action=news_details&news_id=32037.

14. ‘Behind bars for corruption, Gupta still remains party’s head’, *Nepal News*, 25 February 2012, <http://www.nepalnews.com/home/index.php/news/2/16946-behind-bars-for-corruption-gupta-still-remains-partys-head.html>.

The accusations Gupta levelled at the Supreme Court were mirrored in an earlier case from 2011, in which the Supreme Court fined ex-minister Chiranjivi Wagle with Rs 20.3 million and an 18 months jail sentence.¹⁵ After the sentence was passed Wagle termed the verdict unconstitutional and said, “I will not take up arms or leave the country, but tolerate the injustice and fight a legal battle to defend myself.” He also indirectly indicated that the Apex Court’s verdict was unjust and he was being wrongfully incarcerated. Talking to the media, Wagle’s daughter claimed that the action against her father was “unjustified as everybody in power has amassed wealth”. Her logic is a perfect example of the general thinking of the Nepalese people.

So far Chiranjivi Wagle is the only big shark that has been caught in the CIAA’s net after the political changes of the 1990s. The net of CIAA is truly magical in that it only catches small fish, while the bigger fish easily make their escape.

Ineffective measures against money laundering

To fight corruption, Nepal has passed several anti-corruption laws like the Corruption Prevention Act 2002, the Commission for the Investigation of Abuse of Authority Act 1991, the Good Governance Act 2007, Civil Service Act 1993, Impeachment Act 2002 (IA), Military Act 2003 (MA), Judicial Council Act 1991 (JCA), Money Laundering Control Act 2007 (MLCA) and the Interim Constitution of Nepal 2007. Likewise, Nepal has ratified the United Nations Convention Against Corruption (UNCAC) in March 2011.

With the aim of curbing corruption Nepal gave constitutional status to the CIAA. In total, there are 12 state level anti-corruption agencies to prevent, investigate and prosecute corruption cases.¹⁶ Among them the CIAA is the main institution with the power to investigate and prosecute corruption cases.

But under article 120 (1) of the Interim Constitution of Nepal 2007, the CIAA cannot investigate Constitutional Officials and military officers. Constitutional Officials can only be removed if two thirds of the parliamentary/Constitutional Assembly members pass a motion of impeachment, while military officers can be investigated and prosecuted only by a three-member committee headed by the Deputy Attorney General, with the other members being officers from the Defence Ministry and Legal Department of the Nepal Army. Furthermore, the CIAA can only prosecute the person in question after retirement

15. ‘Wagle arrested, sent to slammer’ *Kathmandu Post*, 17 March 2011, <http://www.ekantipur.com/the-kathmandu-post/2011/03/17/top-story/wagle-arrested-sent-to-slammer/219531.html>.

16. After his seizure of power on 2 February 2005, the King Gyanendra established The Royal Commission for Corruption Control (RCCC) which arrested many political leaders on charges of corruption. Yet on 13 February 2006 the Supreme Court found it unconstitutional and it was scrapped immediately.

or removal from the post. As already mentioned, most of the high profile corruption is committed by ministers and high profile government officers; this provision has thus bound the hands of the CIAA and they are unable to prevent, investigate and prosecute corruption cases against constitutional officers, judges, military officers and other high profile officers as long as they are in office. Delayed action on recommendations to pass impeachment has also hindered the justice system. It was recommended by the Constituent Assembly Chairman in August 2010 to impeach Justice Ran Bahadur Bam for instance¹⁷, who is facing corruption charges, but his case is still pending before the Constituent Assembly.

Apart from these high profile corruption cases, there are a multitude of cases that go unreported. According to a research paper 'Criminal Justice Response to Corruption in Nepal',

The success rate of the corruption cases is quite low and 60 percent of the corrupt activities are out of the scope of the law and among the cases registered in the courts, around 60 percent result in conviction. In the absence of physical presence of CIAA in the local level and no sensitization on people, the common people generally do not know where to report the bribery cases [Surya Prasad Parajuli, 2008, http://www.unafei.or.jp/english/pdf/RS_No80/No80_23PA_Parajuli.pdf].

By establishing a Special Court and a CIAA, the government of Nepal appeared to avert national pressure and meet its international obligations. In actual fact however, legal loopholes, political pressures and government indifference have caused the anti-graft bodies to fail at holding the country's rampant corruption in check.

Special Court in controversy

Nepal established the Special Court in 2009 under section 101 (2) and section 3 of the Special Court Act-2059 to hear corruption cases filed by the CIAA under State Cases (Crime and Punishment) Act-2046, relating to cases to be prosecuted and defended by the government of Nepal, and the Money Laundering Control Act-2064 (2007).¹⁸

Immediately after its establishment however, the Special Court came under fire. The Special Court acquitted a string of high profile political leaders, government officers and high profile police officers. The cases filed by the CIAA before the Special Court did not

17. See <http://www.nagariknews.com/politics/party-politics/37953-2012-03-14-03-18-49.html>.

18. The report by Asia/pacific Group on Money Laundering has done a research on judiciary system and efforts to curb the crime of money laundering. Please visit: http://www.nrb.org.np/fiu/pdffiles/Mutual_Evaluation_Report_of_Nepal_2011_20680821.pdf.

lead to any punishment and the public reacted with outrage. The Court gave a clean chit to many high profile politicians, including Gupta, ex-ministers Khum Bahdur Khadka, Govinda Raj Joshi and others on purely technical grounds,¹⁹ leading people to suspect foul play. A source close to Chief Justice Bhupdhoj Adhikar stated, “He used to influence the then chief justices and gave clean chits to corrupt politicians, chiefs of the security forces and bureaucrats on technical grounds”.²⁰

The Supreme Court later ordered action to be taken against the three Special Court Judges who acquitted Gupta in 2007, but this order is yet to be implemented. Similarly, in a 2010 case where the Supreme Court ordered for action to be taken against a group of judges who committed a “grave mistake” while handling a corruption case against former Defence Secretary Chakra Bandhu Aryal,²¹ nothing has been done so far.

It is worrying that the judges entrusted with passing verdicts against corrupt officials are themselves facing inquiries by the Judicial Council. Overall, there are more than 200 complaints against 60 judges, and in most of the complaints the judges are accused of indulging in financial irregularities.²² Complaints are also pending against the Chief Justices of the Appellate Court.

Government unwillingness

The unwillingness of the government to enforce the decisions made by the courts has fostered impunity and encouraged criminal activity. The Nepalese people have lost all faith in the law and do not believe that justice will be carried out. Data collected from courts across the country show that 100,000 court verdicts have not been implemented and the Chief of Judgment Execution Directorate (JED) stated that “The exact number of convicts enjoying impunity could be more than 300,000 as most of the verdicts have more than three convicts.”²³

At present, Nepal has got the largest Constituent Assembly of 601 members and the biggest cabinet of 49 ministers in its history. Among the people in power many are

19. ‘Landmark precedent’, *Republica*, 23 March 2011, http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=29491.

20. ‘Spl Court judge who acquitted Gupta was mired in controversy’, *Kathmandu Post*, 21 February 2012, <http://www.ekantipur.com/the-kathmandu-post/2012/02/21/top-story/spl-court-judge-who-acquitted-gupta-was-mired-in-controversy/231816.html>.

21. ‘SC revisits Special Court corruption verdict’, *Republica*, 22 March 2011, http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=29459.

22. ‘JC shortlists complaints against 12 judges’, *Kathmandu Post*, 1 March 2012, <http://www.ekantipur.com/the-kathmandu-post/2012/03/01/top-story/jc-shortlists-complaints-against-12-judges/232142.html>.

23. ‘300,000 cons on the loose’, *Kathmandu Post*, 16 November 2010, <http://www.ekantipur.com/the-kathmandu-post/2010/11/16/top-story/300000-cons-on-the-loose/214890/>.

involved in corruption, bribery, misuse of authority, smuggling and other illegal activities. Under these circumstances, if there is no anti-corruption body which can investigate and prosecute them, how can these persons be held accountable?

The CIAA has no authority to prosecute and cannot take prompt action against corrupt ministers and constitutional officers. The government is in on the game and is easily corrupted. In Nepal it is common that a corrupt minister will donate a percentage of the profits from corruption to the party in order to cover party and election expenditure, thus also protecting himself from criticism and legal liabilities.

Even worse, the government has not appointed a Chief of the CIAA in the last five years. In the absence of its head the CIAA cannot function swiftly and effectively. The CIAA must be given special powers, enough manpower, sufficient funds and modern equipment in order to check Nepal's rampant corruption. The CIAA should also ensure that the complaints made by the public are heard on time. Ideally, the CIAA should also provide easily accessible information on what legal actions one can take to curb corruption. It should establish a hotline, erect complaint boxes and let the public know which actions are being taken against corrupt officers at the local level. Furthermore, as no one is to be trusted with regards to corruption, a small special unit should be granted the authority to monitor the CIAA.

Lack of government action on dealing with corruption and money-laundering is damaging the reputation of Nepal in international forums. Just recently, the Financial Action Task Force (FATF), an inter-governmental body combating money laundering and the financing of terrorism, threatened to blacklist Nepal if it did not endorse bills on Anti-Money Laundering and Combating and Financing of Terrorism. Fearing the consequences of being blacklisted by the international financial market, Nepal ratified the UN International Convention for the Suppression of the Financing of Terrorism and the UN International Convention against Transnational Organized Crime. But Nepal failed to pass three bills on Controlling Organised Crime, on Extradition and on Mutual Legal Assistance. At a FATF meeting in Paris Nepal was given a two-month deadline to endorse these three bills. But a hardliner faction in the ruling party UCPN-M is in opposition, terming the bills "anti-national".

So far the American Citibank and Washington Bank have suspended their relations with Nepal by requesting that the Nepali Embassy in Washington DC move its accounts to another bank. Though the actual cause behind this move has not been disclosed, experts see it as a result of Nepal's inability to comply with FATF recommendations. If Nepal continues on this path, it will lose its status as a FATF member state. This will have serious consequences for Nepal and will hamper its ability to conduct international business and financial transactions.

A survey conducted by the Central Department of Public Administration at Tribhuvan University in Nepal found that the parliament, the political parties, the central government, CIAA and the police institutions enjoyed a low level of trust.²⁴ Some 83.2 percent of the participants in the survey thought that corruption in Nepal was caused by the lack of political commitment.

What's next?

A weak CIAA cannot control the raging corruption in Nepal. Only strong action by government institutions and the general public can rid Nepal of corruption and bribery. In particular, the Election Commission should take on a more active role and punish corrupt political leaders by not nominating them for election. It should also lobby for the passing of a strict code of conduct where people nominated for parliamentary elections have to meet certain standards and be of good reputation. In the past it has committed the serious mistake of accepting nominations of political leaders who were on trial for charges of corruption. It should also ensure a strict implementation of the election law in order to control the election expenditure of the political parties.

A weak governance system, the absence of the rule of law and respect for human rights, inaction of the anti-graft agencies and political apathy are some of the major causes of corruption in Nepal. Nepal can only prosper if it rids itself of corruption, nepotism and foul political power games. Only then can we hope for a Nepal where development, rule of law, respect of human rights, peace and prosperity is the order of the day. Corruption is an invisible plague haunting Nepal. Every year Nepal receives millions of dollars in foreign aid, but only a small percentage of that money reaches the people in need. The corruption that takes place at all levels of Nepali society has led to inefficiency, injustice and inequality.

It is important that Nepalese people know that no curse was cast on Nepal, but if they do not fight corruption, surely Nepal will be cursed. The public needs to take action against corruption. Common people need to file complaints against corrupt officials and if the authorities fail to act promptly, then one must go to the media and the civil society for support. What is needed in Nepal is a mass movement against corruption.

Article 27 of the Interim Constitution of Nepal 2007 guarantees people the right to information. People should make sure that the government and its institutions respect

24. See http://webcache.googleusercontent.com/search?q=cache:4PRmIzTkDgMJ:www.pactu.edu.np/contents/project/files/prevalence_of_corruption_and_its_challenge_for_improving_governance_in_nepal_by_dr_tek_nath_dhakal_and_ratna_raj_niroula.doc+Prevalence+of+Corruption+and+its+Challenge+for+Improving+Governance+in+Nepal&hl=ne&gl=np

this right and conduct their economic affairs in a transparent and responsible manner. Establishing a right to information help desk, an anti-corruption help desk and hotlines could become powerful tools supporting people in their fight against corruption. The passing of a strong anti-money laundering law and ensuring pro-active anti-graft bodies will help solve the problem of corruption. A Nepal free from corruption is not a distant dream, but an actual possibility if people continue to fight corruption courageously.

Gwangju prize laureates against Jeju Island navy base

Statement by a group of Gwangju Human Rights Prize laureates

We, Gwangju Prize for Human Rights Laureates, remember Jeju Island in Korea as a peaceful island with beautiful scenery and tragic history. These days, however, the tearful crying of Jeju is echoing in our ears caused by explosive blasting for construction of a navy base at Gangjeong village.

In the last few days, explosive blasting of the unique Gureombi laval-rock formation has started. A heavy contingent of police has been deployed once again against the Gangjeong villagers and their supporters.

Most seriously, people who hope the Island remain peaceful have been arrested or taken to the police including one who is currently undertaking his more than 30 days of fasting while in prison and vowed to give his life if the Gureombi rock is destroyed and the construction of the navy base not stopped.

Jeju, a Global Biosphere Reserve, is a beautiful island having three UNESCO World Natural Heritage sites and nine UNESCO Geo-Parks. The Island is formally declared the “World Peace Island” by the Jeju Peace Declaration at the Jeju Peace Forum in 2001 and should indeed be an island for promoting the purpose of world peace with its strategic location at the heart of East Asia (between Japan, China and Korea, with Russia and USA also as interested parties). Construction of the navy base would only serve to further the military tensions and obstacles to world peace in the East Asian region and between the countries involved.

We therefore urge the Korean government to stop the construction of the navy base and promptly release the prisoners regarding this matter.

Basil Fernando (AHRC), 2001 Gwangju Prize for Human Rights Laureate
Wardah Hafiz, 2005 Gwangju Prize for Human Rights Laureate
Malalai Joya, 2006 Gwangju Prize for Human Rights Co-laureate

Editor's note: More information regarding the situation in Jeju Island can be found at: <http://www.humanrights.asia/countries/choose-your-country/south-korea>

Angkhana Neelapaijit (Thailand), 2006 Gwangju Prize for Human Rights Co-laureate
Lenin Raguvanshi (India), 2007 Gwangju Prize for Human Rights Co-laureate
Muneer Malik (Pakistan), 2008 Gwangju Prize for Human Rights Laureate
Sushil Pyakurel (Nepal), 2010 Gwangju Prize for Human Rights Laureate
Binayak Sen (India), 2011 Gwangju Prize for Human Rights Laureate

Prison visits in the Philippines

Human Rights Correspondence School

The conditions of prisons in many Asian countries give rise to further abuse and human rights violations, including torture and ill treatment. While existing human rights standards provide for prisoners to have the same human rights as everyone else with certain limitations due to liberty restrictions, the reality is far different. Throughout Asia, prisoners are denied basic human rights, such as the right to adequate food, sanitation, health care. Prisoners also often suffer verbal and physical abuse.

The idea of visiting prisons and places of detention is to ensure that prisoners' basic rights are protected. Deprived of their liberties, prisoners are vulnerable to all forms of ill treatment. Moreover, respect of their fundamental rights and needs is exclusively dependent upon the authorities in charge. Regular visits can therefore improve the transparency within detention centres, which in turn will reduce the levels of abuse.

Prison visits in the Philippines

Since 2006, the Asian Human Rights Commission (AHRC)'s Philippines desk has organized visits to victims of torture and other human rights violation whose cases had been issued as urgent appeals, at the different detention facilities within and outside Metro Manila. The purpose of these visits was not just to meet and check up on the victims, but also to update them about the progress of their case, such as informing them of the letters and responses received from the government and others on their case, any reports published using their cases, and so forth.

Sometimes their family members, friends and paralegals are taken along to visit them in prison, to discuss their case as well as to simply chat, which serves victims as informal trauma counselling.

During such visits, the AHRC staff have also come across detainees who asked for intervention in their case; for instance, their case hadn't been heard for many years in court. One such case was that of Iladio Laydan, a prisoner whom we met at the North Cotabato Provincial Jail in Kidapawan City, Mindanao in June 2010. Laydan was arrested and charged with rape and homicide on 23 September 2004. Only three years after his arrest,

This article is a summary of the latest Human Rights Correspondence School [Lesson Series 67: Prison visits in the Philippines](http://www.hrschool.org/modules/67). Please see the entire lesson at: <http://www.hrschool.org/modules/67.pdf>.

in July 2007 did the Regional Trial Court (RTC) 12 in Kidapawan City resolve that he had a case to answer. Laydan was arraigned on July 24, and when the Court commenced his trial on 27 September 2007, he appeared in court without a lawyer. The court appointed a private practitioner, lawyer Russel Abonado, to be his “counsel-de-officio to assist him in today’s hearing only”, but it turned out that his ‘one-day’ lawyer was representing him throughout the case.

On July 19, 2008, Rogelio Narisma, the RTC judge, ordered Abonado to be replaced because he seemed to be too “busy with his other official functions... [to] attend regularly to this case”. A lawyer from the Public Attorney’s Office, Joseph Jev Palomar, then took over the case upon the Court’s request for a lawyer.

By June 2010 however, little progress had been made in his case. At this time, AHRC staff were conducting a regular visit of torture victims whom urgent appeals had been issued for. The victims were asked about the progress of their case, whether any relatives or the Commission on Human Rights had visited them, when was their last hearing and next hearing, and so forth.

A few meters away, a man was observing them intently. According to AHRC staff,

After hearing all these questions, and realizing that those victims being spoken to had more regular visits by their non-relatives than any other prisoners, he was curious about what we were doing.

He came to sit next to me and started asking me questions. He moved slowly, physically weak, and his clothes were dishevelled as he was talking to me. After hearing questions about their scheduled hearings whether their lawyer had spoken to them, Laydan told me that his case was never scheduled for hearing, and that the public attorney representing him never bothers to tell him about his case.

In the Philippines, a person like Laydan, accused for rape and murder, regardless of whether he is innocent or guilty of the charge, would get little help from any NGOs or other groups. Sexual offence is a taboo for any NGOs or even human rights lawyers—justifying these types of cases are not in their mandate.

Moreover, Laydan is a member of an indigenous tribe, for which sexual offense is a taboo. Once a member of the tribe is accused or charged of such, they become outcast, and even their own families do not visit them in jail. When I spoke to Laydan, given the fact that he is a person who had no education and no idea about the laws and legal process, he said if he indeed committed the offence as charged he would not mind to be killed at anytime, but he is innocent.

In October 2010 the AHRC began writing to concerned authorities regarding Laydan's case, as well as initiating a discussion on the issue of legal aid in the country.

When another visit was conducted in July 2011, and inquiries were made as to what had happened in his case, Laydan said that to his surprise, a new lawyer had been appointed, who adequately briefed him about his case's progress before and after each hearing, and the hearings were taking place regularly as well.

While Laydan's case is still ongoing at the time of writing, the Public Attorney's Office in Kidapawan City has become more careful in the cases they are handling, which can also be seen in their responses to the AHRC's appeals and statements.

This case also brought up other issues for discussion and contemplation, such as the protection of minority rights as well as a person's basic rights to fair trial and due process. It demonstrates the importance of documentation and monitoring, as well as spotlighting how an individual case can speak to larger systemic issues.

'Talisay 3'

On 1 February 2010, the AHRC reported the case of three peasant organizers Charity Diño, Billy Batrina and Sonny Rogelio, who were illegally arrested and detained by armed men in plainclothes on 23 November 2009 at 8am. At that time, the three organizers were in the municipality of Talisay, Batangas, inviting people in the community to participate in the Urban Poor week. While they were walking, three vans blocked their way. Armed men alighted and forced the three into the vans. One of the vans had been seen roaming the village a day before the incident. The three victims were later known to have been taken to the 730th Combat Group of the Philippine Air Force Camp in Palico, Batangas.

At the military camp, they were tortured, subjected to questioning and held for 17 days. They were blindfolded with adhesive tape and handcuffed. Billy and Sonny had their heads hit against the wall, while Charity had her fingers squeezed hard with bullets inserted between them. Several military personnel interrogated them one after the other. Under torture, they were forced to admit to being members of a rebel group, the New People's Army (NPA). Several names were also mentioned and they were asked if they knew them.

The day after the incident, November 24, the three were taken to the Office of the Prosecutor in Batangas where they were subjected to inquest proceedings. On November 26, charges of illegal possession of firearms and explosives were filed against the three at the Regional Trial Court (RTC), Branch 6 in Tanauan, Batangas, and charges of illegal possession of drugs were also filed against Charity at the Municipal Trial Court (MTC) in Talisay, Batangas.

After they were charged in court, and 17 days after the military took custody of them, they were transferred to the Batangas Provincial Jail in Lipa City.

Under Rule 113, section 5 of the Revised Rules on Criminal Procedure, only a person attempting to, in the act of committing or who has already committed a crime can be arrested without a warrant. In such situations, a person could be subjected to inquest proceedings on condition that the arresting officers and the prosecutor conducting the inquest are able to establish a 'probable cause' to proceed with prosecution. According to this, the manner of arrest and the subsequent filing of charges against Billy, Sonny and Charity was illegal: the three victims were abducted, they were not properly informed of the nature of charges against them, and evidence was allegedly planted on them to justify the filing of charges in court. They were also held in a military camp instead of the regular detention center required by law. Furthermore, the Anti-Torture Act of 2009 declares the use of torture in criminal investigation a criminal offense. Under this law, evidence and testimonies obtained by way of torture cannot be used in court proceedings [See AHRC-UAC-005-2010].

In June 2010, AHRC staff visited the three victims at the Batangas jail, at which time they documented further details of their torture, which were not mentioned in the earlier appeal, and learned of the case status in court; when the last hearing was held, scheduled and discussions of their lawyers.

Although the victims were keener on pushing for their immediate release (because the charges against them were fabricated) than on pursuing a torture complaint, they nevertheless encouraged AHRC to pursue the complaints of torture with the CHR on their behalf. Despite the AHRC's communications with both the CHR and the Ombudsman, there was no investigation into the case, and it remains pending today.

During this visit, the three detainees also shared considerable information regarding the illegal activities occurring inside the prison, such as corruption, prostitution and prison officials taking sexual advantage of the detainee's wives and girlfriends. Due to the fact that Billy, Sonny and Charity were perceived as 'political detainees', they were treated slightly better than the other prisoners, and they used their privilege in organizing other detainees to defend their rights and ensure basic conditions. The numerous visits they had by the AHRC as well as other NGOs gave them a certain level of protection, which they used to speak out and complain against prison officials on behalf of other detainees.

'Abadilla Five'

In August 1999, five persons, Lenido Lumanog, Augusto Santos, Cesar Fortuna, Rameses de Jesus and Joel de Jesus, were sentenced to death by the Regional Trial Court (RTC) in

Quezon City for the murder of an influential police colonel, Rolando Abadilla. Since then, the five are known as the 'Abadilla Five'. They were convicted on the testimony of a lone alleged witness, and detained in the New Bilibid Prisons, Muntinlupa City, Metro Manila.

The court's decision convicting them has since been repeatedly challenged by the accused and their legal counsels. However, the court denied the accused' motion to reconsider its decision and to conduct a new trial in order to allow them to present evidence that could prove their innocence. The evidence would also prove that it was a rebel group, the Alex Boncayao Brigade (ABB), who were responsible for Abadilla's murder. None of the Abadilla Five were ABB or had any links to the ABB. In February 2000, the case was transferred to the Supreme Court for mandatory review as required by the rules of criminal procedure involving death sentences. In January 2005, the Supreme Court transferred the case to the Court of Appeals for review, and finally in April 2008, the appellate court upheld the sentencing of the lower court. The accused petitioned the Supreme Court to review the decision in May 2008, and the Supreme Court upheld the guilty verdict on 7 September 2010. The five are now seeking presidential clemency.

The AHRC first took up the Abadilla Five case in June 2007, when their appeal questioning the lower court's decision convicting them for murder was pending at the Court of Appeals. The case had dragged on for many years, with the lawyers and NGOs assisting them facing many difficulties.

Staff from the AHRC first visited the Abadilla Five in prison at the beginning of 2008 with their former lawyer Soliman Santos. There was a renewed interest by the public into their torture complaint and the failure of the justice system, so at the time of the visit the detainees were given a morale boost. They felt that they were not ignored, and even after many years, their case was still being followed. During the visit, the AHRC was made aware of details regarding the pending court case, as well as their condition inside the jail, particularly of kidney transplant patient Lenido Lumanog. As a result, the AHRC requested for him to receive medical attention [see AHRC-UAU-014-2008, 28 March 2008] which the Bureau of Corrections (BuCor) of the Department of Justice (DoJ) later assured would be taken care of.

There were many other benefits from that (and subsequent) visit(s). As noted by AHRC staff,

That visit strengthened our relationship not only with the detainees' families, but also with the lawyers and other civil groups helping the detainees. In fact, to me it was one of the breakthroughs in terms of the AHRC's work regarding how to engage with detainees, legal counsels and groups.

The visit facilitated our connection with the detainees' families—wives, children and other relatives—whose interest and morale in working on the case was then renewed. The families began pushing the Ombudsman to resolve the torture case, for the Court of Appeals to resolve their appeal for conviction and for the Commission on Human Rights (CHR) to take upon themselves in pushing for the prosecution of the complaint of torture by the victim (it was the CHR who filed the complaint first).

We had dialogues with the CHR and a regular protest at the Office of the Ombudsman regarding their inability to resolve the case promptly. The combination of following up the legal aspects of the case as well as other forms of protest helped to motivate public interest.

At the time of writing, the victims are keen on seeking presidential clemency after the Supreme Court affirmed their conviction.

The AHRC was able to produce a tremendous amount of documentation on their case, including a publication of detailed interviews with the families of the victims in their pursuit of justice.

General prison conditions in the Philippines

The Philippines does not have a centralized law or agency regarding the management of prisons, and thus it is difficult to assess prison conditions. Some prisons are managed by civilian authorities, while others by the police and military. There is a lack of accountability in the management.

2.17 The lack of an effective register of detainees: the prison system is poorly organised, with no central, well organised register of detainees, which feeds the problem of torture and impunity for this practice. The Bureau of Corrections (BuCor), which is under the Department of Justice (DoJ), is responsible for those “sentenced to serve a term of imprisonment of more than three (3) years.”¹ The Bureau of Jail Management and Penology (BJMP), which is under the Department of Interior and Local Government (DILG), is responsible for “persons detained awaiting investigation or trial and/or transfer to the national penitentiary.”² Further to detention facilities under the (DoJ), the BJMP or the Jail Bureau, “exercise supervision and control over all city and municipal jails” and the respective provincial governments where the provincial jails are located also exercise ‘supervision and control’ and operate autonomously from the DoJ. The operation of city jails, municipal jails and provincial jails, are directly under the supervision and control of the respective local governments. The operation of provincial jails depends solely on the availability of funds of the province. Should a particular province suffer from a lack of budget or resources, resulting

1. Bureau of Corrections (BuCor) mandate and functions

2. Section 63, Chapter V, Department of the Interior and Local Government Act of 1990 (RA 6975)

in deteriorated detention conditions, the Department of Justice (DoJ) could not intervene as it lacks jurisdiction [ALRC, 'The situation of torture in the Philippines', alternative report to the Committee Against Torture, 2009; ALRC-TBR-001-2009].

Other issues that have been spotlighted by documentation and prison visits:

Sanitation and medical treatment

Different prisons and detention centers in the country have had detainees die from tuberculosis, which is shocking; tuberculosis is no longer the dreaded affliction that killed millions in past decades. It has been for many years now an easily treatable disease and the fact that prisoners die of it whilst in custody speaks of the criminal neglect of the prison authorities. In December 2008 Melvic Lupe, a detainee held at the Karangalan Police Station, Cainta, Rizal died from tuberculosis, while the charges filed against him and his fellow workers was pending at the Regional Trial Court (RTC), Branch 80, in Morong, Rizal. The workers were detained on fabricated charges due to protesting against the illegal dismissal of their fellow workers and poor working conditions. There had been needless delays in the conclusion of the case due to the judge taking leave of absence and other factors. A year later, another worker, Leo Paro of Parang, Marikina City, also died of tuberculosis on 24 September 2009 after becoming ill due to poor prison conditions and lack of adequate medical attention. Paro and Lupe were physically fit and did not have these types of illnesses prior to their detention. Despite the death of one of the detainees over a year ago, the following death of Paro illustrates the authorities' continued failure to improve conditions and prevent similar deaths of the detainees who are under their custody and care.

The cell occupied by these detainees measured some four square meters. Initially more than 20 inmates were occupying the detention cell. All of the detainees had to take it in turns to sleep due to the overcrowding. The detainees' vulnerability to contracting illness inside the jail and the weakening of their bodies was also aggravated by the lack of adequate food and nutrition. Not only is the food scarce, there are occasions when the food ration is served late. And even if visitors bring food for the detainees, the guards would take some portions of the food before it reached them [See AHRC UAC-109-2009, 21 August 2009; UAU-207-2009, 29 September 2009; and AHRC-OLT-027-2009, 7 October 2009].

In May 2005, two inmates died of tuberculosis (TB) disease and heart disease in separate incidents inside the General Santos City Reformatory Center (GSCRC). There have been a number of inmates who contracted or acquired a number of diseases including tuberculosis, severe coughing and high blood pressure. Although the jail authorities are aware of the situation, their response has been poor.

The Department of Interior and Local Government released its findings and evaluation regarding the condition of prisons all over the country on November 2004, and reported

the increasing number of inmates in prisons and penitentiaries contracting tuberculosis. Among the causes for the disease to spread are congested prison centers and lack of food. This, however, has not been adequately addressed.

According to the Commission on Human Rights regarding its evaluation of prison conditions in the country report for 2005, Dr. Renante Basas, director of the Commission's assistance and visitorial office, concluded that the country's jails and detention centers, including the seven national penitentiaries, have remained below the standard.

Suspicious deaths

Sometime in the first week of December 2005, an 18-year-old inmate, identified as Arthur Esquelona died on his way to the General Santos City Hospital. Esquelona was taken to the hospital by jail officers of the General Santos City Reformatory Center (GSCRC) after he complained of severe stomach pain. According to Supt. Amilbangsa Aming, jail warden of the GSCRC, the victim may have died of an ulcer.

Esquelona had been detained at the GSCRC for awhile. After the victim's death, his parents, Rodrigo and Rosalinda raised suspicions over the incident. The couple claimed that their son was in good health prior to his detention and when they visited him in October 2005.

According to Rodrigo, his son was found to have a blood clot on his head, which he theorized may have caused his death. They are not convinced that their son died of an ulcer as reported by the jail officers. This prompted them to have their son subjected to an autopsy examination.

In the autopsy report released by Dr. Antonietta Odi, medico-legal officer at the City Integrated Health Services (CIHS), it was found the victim's body had traces of injuries on the head. Dr. Odi said the victim's head may have been beaten or thrown into a hard object, which may have caused his death. According to Odi's opinion, deaths of patients who are suffering from ulcers are completely different from Esquelona [See UA-242-2005, 21 December 2005].

Two more inmates died in the GSCRC custody later in December 2005, Vincent Abella and Mary Jane Mancera. Abella was found dead while in deep sleep, while Mancera died on her way to hospital on December 28 after she suddenly collapsed in the jail. These deaths were not thoroughly investigated, with the police merely recording whatever information is reported to them by the jail authorities, citing constraints of authority and jurisdiction [See UP-01-2006, 2 January 2006].

On 28 July 2005, the AHRC received information of a suspicious death of an inmate who had had serious threats on his life prior to his death. It is reported that on July 12, Joselito

Tobi, an inmate who was falsely charged and detained at the provincial jail in Palo, Leyte following the 21 November 2005 vigil held by farmers regarding the distribution of land allegedly died from food poisoning.

Tobi also had criminal complaints pending against the military for the death of nine peasants in Palo, Leyte. Tobi and his fellow inmate, Arniel Dizon, reportedly had received threats two weeks before his death. The AHRC is not aware of any thorough investigation conducted into Tobi's death. Those responsible of allegedly poisoning Tobi, and threatening him and Dizon remain unknown [For details please see UP-151-2006, 31 July 2006 and UA-216-2005, 21 November 2005].

As the above cases indicate, prison conditions in the Philippines are far from ideal. They do not meet even national standards, let alone international ones. National standards can be found in the Bureau of Corrections Operating Manual, as well as statutory provisions regarding persons in custody, while international human rights standards for prisoners are found in the Universal Declaration of Human Rights (UDHR), the United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) and the Basic Principles for the Treatment of Prisoners (Basic Principles).

Making complaints

In most cases, prisoners or detainees do not complain directly to the prison authorities. Although there are guidelines and rules in terms of complaint making, prisoners prefer to inform their relatives, who in turn make complaints to the prison authorities. As for those detainees who do not have relatives to complain to, they usually ask to be included in the complaints of fellow detainees.

Even though it is a third party—relatives or others—making complaints to the prison officials, there is still caution for the fact that they are directly complaining to the prison officials who have power and authority where the complaining detainees are held. Once the prison officials come to know of the complaint, the relevant prisoners are targeted, not physically, but in a variety of methods. They are not given sufficient food for instance, are subject to solitary confinement or isolated from other detainees, and are denied the privilege of roaming about the jail compound.

In the worst scenario, the detainees are prevented from going out of their overly congested cells, due to being considered a “security risk”; the act of complaining itself is interpreted as the detainees threatening the security of the entire detention facility. In this case, hardly any progress will be made regarding the complaints.

In detention centers where all prisoners are held together, whether pre-trial, ongoing trial or convicted, prisoners are themselves becoming *de facto* prison officers due to the lack of resources and inadequate number of prison officers. To obtain such a privilege, prisoners must impress upon the prison officials and guards that they are actually working for them, submitting to their authority without question.

Once a prisoner becomes a *de facto* prison guard, he/she will get the privilege of even holding keys to prison cells, registering visitors and working in the canteens that are funded and owned by the prison officials and guards, which is in fact illegal under the prison guidelines.

The Commission on Human Rights (CHR), the Public Attorney's Office (PAO) and the Courts who have jurisdiction over particular detention facilities have the power and authority to conduct jail visits unannounced to ensure the detainees are well treated and the administration is running smoothly. Unfortunately, such visits are hardly ever conducted. The PAO also has the additional legal obligation to discuss with the detainees and inform them of the progress of their case. In practice however, the detainees are only informed by letter or when they are taken to court for their hearings. In other words, the detainees only have a chance to talk to their lawyer when they appear in court for trial.

There are many Civil Service Laws and other laws regarding complaints against prison officials in performance of their duties. They can be charged for administrative or criminal offences once they are found to be committing violations in performance of their duties. Hardly any prisoners take this course however. As mentioned above, it is not practical to file a complaint against the prison officials who have authority and power over the detention facilities where one is held. There is hardly any protection afforded to complainants or witnesses to crimes in the Philippines, so what can prisoners expect?

As a result, prisoners tend to organize themselves collectively inside the detention centers for their own protection. Some join gangs, religious groups and many others who could help them in times of need. There are many fights and riots amongst prisoners themselves, with many dying. The more 'connections' these groups have with prison officials, the more immunity they have for any criminal activities, as well as more privileges and perks inside the detention facilities.

In some detention facilities, prisoners who could no longer bear the abuse and oppression by prison officials, such as corrupting the budget for their food, medical needs and others, may go on hunger strike. There is also anecdotal evidence whereby prisoners were released by prison guards to commit crimes outside, like theft and robberies, or wealthy prisoners were allowed to go outside the detention facilities for their personal errands. Once this was publicized, the prison officials would be sacked, if not moved to other facilities. Such a strategy is thus more effective than making use of the complaint procedure that exists on paper.

Asia: Discrimination and violence hamper gender equity

Statement by the Asian Human Rights Commission on the occasion of the International Women's Day: AHRC-STM-047-2012, 8 March 2012

Today marks the International Women's Day, a day to reflect on the gains achieved by women in the respect and protection of their rights and to denounce the places in which those rights are too frequently trampled on. In its 1977 resolution 32/142, the United Nations General Assembly called for the proclaiming of a UN Day for Women's Rights and International Peace to "create favourable conditions for the elimination of discrimination against women and for their full and equal participation in the social development process". It is unfortunate that discrimination and violence against women in Asia continue to be the norm today, and that their participation in society is both minimal and unappreciated. Discrimination is in fact increasingly taking on a violent face, and the Asian Human Rights Commission denounces the high rates of rape and sexual violence prevalent in Asia. The utter neglect with which state institutions as well as society address such issues and deal with the victims is symptomatic of the continuous challenges Asian women face in claiming their rights and contributing to social development.

Rape and sexual violence are widespread in Pakistan, India, Bangladesh, Nepal and Burma, while a recent increase in such cases has been seen in Sri Lanka and Indonesia.

While all human rights abuse victims in Asia struggle to obtain legal redress amidst weak rule of law frameworks and corrupt justice officials, victims of gender-based violence face the added difficulties of discrimination and sexual stereotypes, including from the police and the judiciary. It has been observed all over Asia that rape victims routinely face hostility from law enforcement personnel and the courts.Â In many cases the police collude with the perpetrators to pressurize the victim to drop the case or to enter a negotiated settlement. All of this was seen in the abduction and rape of Pakistani teenager Uzma Ayub, who was gang-raped in captivity for one year, before escaping in September 2011. Since then she has been struggling to obtain justice through the courts, to little avail. Uzma and her family faced numerous threats and settlement offers, and finally her elder brother was murdered in December 2011. The police and army officers involved in her abduction and rape are known, and yet they are not being promptly held accountable.

The investigation of cases of violence against women lack professionalism and often the police may not even inform the victim of the need for a medical exam. When the victim does go for a medical exam, she is likely to face a dismissive attitude from the doctors and hospital staff, influenced by the dominant social attitude stigmatizing rape victims. A Nepali nun who was raped in July 2011 was initially turned away from a hospital for treatment, while her nunnery debated whether or not she would be allowed to return.

State institutions and officials are just as guilty of harbouring patriarchal and repressive attitudes against women as the rest of society. These attitudes tend to place the blame for rape on the victim herself, rather than the perpetrator. This not only allows the perpetrators to go free, encouraging further violence, but also contributes to a second victimization of the survivor of rape, who too often has to face a hostile attitude from her community. Judges, particularly of the lower judiciary, have largely not been trained or sensitized to gender issues and their way of dealing with such cases often causes further humiliation for victims. Reports from various Asian countries detail rape victims having been publicly cross-examined in court and forced to describe the rape in details, with male judges using insensitive and humiliating words in the process. In other words, rather than protecting women's fundamental rights, the police and judiciary are turning themselves into instruments to perpetuate traditional discriminatory and repressive views against women.

As a result, conviction rates for reported rapes remain alarmingly low, and seeking legal redress becomes synonymous to facing further harassment and stigma for the victims. An overhaul of the justice and policing systems to strengthen their capacity to work professionally in an accountable manner is thus required. Nevertheless, it is only by changing the perception of rape victims in the society, by addressing dominant discriminatory views against women, that women's access to justice can genuinely be increased. This includes gender-sensitive training for all public officials, as well as education and awareness within the larger society regarding education for girls and equal opportunities for both genders.

Despite the high rates of violence against women, this issue is largely not understood as a priority, often subsumed in discussions of national security, economic development or other issues. Until discrimination and violence against women is conceived as an integral part of the human rights movement, there will be little change in the ground reality facing women in Asia and many other parts of the world.

Sexual violence prevents women from realizing many other rights, slows their journey to emancipation and makes gender equity a distant dream. Fears of facing violence in public areas, followed by societal attitudes blaming victims of rape for their abuse, work to confine women to their homes. How can women participate in the economy and politics,

a springboard to ensure their capacity to protect their rights, if they are at risk and then blamed for doing so? It is crucial for such blame and condemnation to be shifted to the perpetrator, while the survivors are ensured support and justice.

The Asian Human Rights Commission recalls that the Convention on the Elimination of All Forms of Discrimination against Women mandates state parties to “*modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women*”. To eradicate rape, violence and discrimination against women from Asian societies, a comprehensive strategy of modification of societal patterns and structures fuelling prejudice and stereotypes are necessary and the incapacity of law enforcement institutions to protect the women from sexual violence must be addressed in priority. Only then can women truly realize their potential and participate in society’s development. With the poor state of many of Asia’s societies, surely the participation of women will be akin to tapping much needed resources.

Pakistan's religious minority women facing double discrimination

Bushra Khaliq

Being a woman in Pakistan is not a privilege. In fact, her situation is bad if poor, and worse if she belongs to a religious minority group. The larger picture of social, political and economic conditions of Pakistan's religious minorities today tell us that the women belonging to these groups face double discrimination and marginalization. They are abused, harassed and discriminated against, ranging from access to far lower education levels, to forced conversions, abduction, forced marriages and torture in custody.

With reference to the universal human rights standards, Pakistan's existing policy framework and personal laws available to minority women only offer stark realities of religion-based discrimination at the workplace, educational institutions and even neighborhoods.

A recently published study by the National Commission of Justice and Peace report, titled 'Life on the Margins,' speaks volumes about the prevailing conditions of minority women. The report is based on interviews with more than 1,000 Hindu and Christian women. According to the report,

43% of women belonging to minorities have suffered religious discrimination at workplace, in educational and social institutions. 76% of them also suffered sexual harassment at work, which is often a menial job and low income, such as domestic work in houses of rich people. The literacy rate is 47%, well below the national average of 57% while infant mortality rate is 10.3 % compared to the national mortality rate that is 8.7% [<http://www.ncjppk.org/life.pdf>].

These are embarrassing figures for all of us who claim to be proud Muslim Pakistanis.

The most worrying phenomenon is the forced conversion of Hindu women to Islam in Sindh province, which has become alarmingly common. The recent cases of Rinkal Kumari and Dr. Hifza got media attention because of their high profile nature. Most other cases however, are generally hushed up. According to some human rights experts,

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there are about 1,000 such cases officially reported every year. During the last four months, 47 Hindu girls have been abducted, forcibly converted to Islam and remarried to Muslim men. Religious bigots shamelessly exploit the social marginalization of minorities, in particular, the absence of a legal mechanism to register Hindu marriages.

The courts meanwhile, are not considering women's rights in the light of universal human rights standards, and are complicit in promoting this forced conversion by their judgments. Moreover, such judgments encourage the religious zealots to continue this forced conversion of young Hindu women by abduction and rape, using the court's rulings in their favor. Did the courts ever look into why only young minority women and girls convert to Islam, and why not older women or men?

Besides being a clear violation of human rights, this is also a clear reflection of cultural bias, whereby women's autonomy is limited or denied, significantly affecting their independence, self-esteem and freedom of choice.

Families tend to control girls' autonomy; it is therefore the men who take important decisions about their lives and well being, making it a case of several jeopardies.

The overall condition of subordination, poverty and marginalization of minority women is reflected within the private and public domains. Their living and economic conditions also places them on the margins of social and economic development.

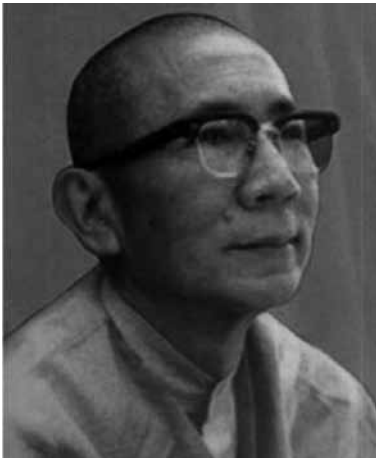
There is an urgent need for policy responses and effective legislative measures to check the multiple discrimination against minority women. Issues such as legal disparities of personal laws concerning minorities, religious and gender biases, and forced conversions are not only questions of already vulnerable communities, but of vital national importance.

The vulnerability of these women increases when they fight alone. Not only must the government intervene with legislative measures to establish gender equality, equal opportunities and rights for minorities, but civil society must also support them in their plight. Only the end of religion based discrimination at the state and society level can bridge the gap of their social, economic and cultural division. This is not merely an issue of the minority communities, but a national issue.

Burmese religious elder imprisoned for peaceful practice of faith

Urgent Appeals desk

Elderly religious leader Shin Nyana was arrested and imprisoned in 2010 under laws established to politically control religious groups, for establishing a religious order in Burma that claims to adhere to Buddhist teachings but rejects orthodox doctrine. He has now exhausted his judicial appeals, and his followers are calling on the head of state in Burma to intervene in the case.



Shin Nyana began his practice as a monk, but because he did not agree with some aspects of orthodox Buddhist practice in Burma, he left the monkhood in 1979. He continued to preach according to his own understanding of Buddhist teachings, as a lay religious figure, and in 1983 left the orthodox Buddhist tradition in Burma. He set up his own religious group, known colloquially as Moepyar. In the subsequent years, the group remained small, with gatherings of adherents in the hundreds at most, and with a number of modest centres scattered around the country. They taught and practiced their faith and distributed materials (books, tapes, CDs and so on) only in the centres, and did nothing to disturb the

enjoyment of other people to their own faiths.

Nonetheless, in 2010 the religious affairs ministry initiated legal action against Shin Nyana, accusing him of setting up a sect that does not adhere to the official doctrine laid down by the peak Buddhist body, which is under the control of the government. After police investigated, it brought six charges in four cases against the 75-year-old religious leader, who in court denied wrongdoing on the grounds that his group was not part of the orthodox Buddhist order and was not beholden to its orders, and nor did it constitute any form of schism. Despite his arguments, the courts sentenced him to a total of 20 years in jail.

After appeals against the convictions failed, in 2011 some followers of Shin Nyana lodged a writ petition to the Supreme Court, but it also failed. Now, they have submitted

a special request asking for the intervention of the president, on grounds that the imprisonment of Shin Nyana violate the right to religious freedom under the 2008 Constitution and also under the Universal Declaration of Human Rights. Furthermore, they note that the sentencing of Shin Nyana on multiple charges for the same alleged offence is illegal under the domestic law of Burma.

In 1984, a court already once sentenced Shin Nyana to three years in prison for allegedly impersonating a monk. However, in 1985 the apex court then overturned the ruling on the ground that as Shin Nyana wore light blue traditional shirts and trousers, he did not commit any offence of impersonation.

After the antigovernment protests in 1988, a new military regime in Burma imposed martial law and established military tribunals to try people for a range of offences. At that time a tribunal also summarily sentenced Shin Nyana to 10 years in prison, from which he was released in 1998, having served over seven years of the sentence.

Religious discrimination and political control

The appeal for the release of Shin Nyana by his followers comes at a time that Buddhist monks are again becoming increasingly active in the political life of Burma, as they have been for centuries. The Asian Human Rights Commission recently issued an appeal on the repeated re-arrests of Shin Gambira (AHRC-UAC-044-2012) after his release from prison in January. It has also been following the case of another monk, the Shwenyawar Sayadaw, who was forced to vacate his monastery after allowing the National League for Democracy to use it for advocacy purposes.

The laws that were used to imprison Shin Nyana have been introduced by successive military authoritarian regimes precisely with the objective of politically controlling monks and other religious figures who fail to comply with government dictates. If the government of Burma is genuinely committed to proceeding along political change and a democratic path, these laws are among others that need to be reviewed by the legislature and either significantly amended or revoked, so that people in Burma can in fact enjoy the rights that they deserve to enjoy, including those to allow for peaceful practice of religious faith, irrespective of creed.

To support Shin Nyana's case, please visit: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-046-2012. For more commentary on these and other human rights issues in Burma, visit <http://www.humanrights.asia/countries/burma>.

Fake prophetess: How a lady fooled the Muslim leaders

Baseer Naveed

(Edited text of an article originally published at <http://www.viewpointonline.net/fake-prophetess.html>)

During the general elections of 1970, when the Pakistani army realized that the Awami League of Bangla Desh (East Pakistan at that time) and the Pakistan People's Party (PPP) of Bhutto, from West Pakistan were attracting people, with no other party able to draw even 5000 supporters to its rallies, they imported Zohra Fona, a woman from Indonesia, apparently pregnant with Imam Mehdi. Zohra Fona claimed that the child in her womb recited the Azaan, the Muslim call to prayer. Ulema (religious scholars) like Maulana Okarvi and Ehtesham Ul Haque went to see Zohra Fona and listened to the Azaan with their ears close to the lady's womb.

Today, the military establishment has brought a new male Zohra Fona with the name of Zaid Hamid, who calls himself a defence analyst and preaches Jihad against USA, NATO and India, and says one day the Islamic forces will capture all these infidel countries. He can be seen on different television talk shows making his speeches. People like Zaid Hamid are said to be the best people and real lovers of our religion. But our past tells that they cannot survive for long.



The 1970s general election provides a parallel. At that time President Yahya Khan and his cabinet wanted to make sure that religious groups won. The media, particularly the Jang group and its publication Akhbar-e-Jahan, issued polls predicting that Jamat-e-Islami and the Pakistan Muslim League Council would win the election. The Awami League of Sheikh Mujib-ur-Rehman would come in third, followed by the Pakistan Peoples Party (PPP) of Zulfikar Ali Bhutto in fourth or fifth place.

To support the Islamic movement, Mr. Mian Tufail Mohammad of Jamat-e-Islami and Nawabzada Sher Ali Khan, then minister of information in the military cabinet, stated that Pakistan was created on the basis of Islamic ideology. This is how the 'Ideology of

Pakistan' was born. This ideology translated into the now famous slogan, "Pakistan ka mutlab Kia la ilaha ilallah" (What Pakistan stands for: There is no God but one).

Most of the time when he was awake, Yahya Khan was drunk. Nonetheless, he was portrayed by the Islamists as a genuine and brave Muslim leader. This can be verified by checking the newspapers back then, particularly the Jang.

When the Pakistani army and bureaucratic establishment realized that Mujib-ur-Rehman's Awami League and Zulfiqar Ali Bhutto's PPP were attracting people, they imported Indonesian Zohra Fona, apparently pregnant with Imam Mehdi. It was propagated that she had visited several Islamic countries, and had led the rulers in prayer (despite a woman not being able to do this according to traditional Islamic thought).

Many Muslim intellectuals and scholars claimed through their writings and lectures that the time for Imam Mehdi's (the 'Guided One', the prophesied redeemer of Islam who would unite the Muslim world and eliminate tyranny and injustice) had come. A new Islamic world was about to emerge. During this period, the Islamic parties including Jamat-e-Islami, perpetrated violence. Members started attacking liberal and progressive professors, doctors, writers, journalists as well as their houses. They also burned many libraries and collections of books.

Zohra Fona claimed that the child in her womb recited the Azaan and could lead the prayers. Ulema like Maulana Okarvi and Ehtesham Ul Haque went to see Zohra Fona and listened to the Azaan with their ears close to her womb. Prayer events were arranged for her in open places as well as in the larger mosques, and the Ulema would pray behind her. She would stretch her legs towards Mecca, directing her womb toward the pulpit. Suddenly the Azaan would start coming from her womb or from another private part. The Ulema were so shameless that they offered prayers while focusing their eyes on her private parts.

Back then the left was very organized, so it was difficult to explain this farce. Finally the Pakistan Medical Association and doctors at Jinnah Hospital, Karachi decided to unearth the drama. Several lady gynecologists were asked to help; they knew that this kind of thing could not happen. But Zohra Fona was very clever. Whenever doctors were pursuing her for a medical examination, she avoided them with the help of the Pakistani security forces. But one day, when she was unable to escape, the doctors of Jinnah hospital conducted an examination, recovering a small tape recorder from her womb.

The drama was over, but the doctors were branded as communists. Meanwhile, Zohra Fona immediately left the same night for India, and directly traveled on to Indonesia.

This is a true story, and one day we will find another story for Zaid Hamid. I appreciate that Hamid gives good entertainment whenever he appears for 20-30 minutes on the screen. I believe he is a patient with high blood pressure, and may be suffering from schizophrenia. But I would not ask doctors to examine him as they did Zohra Fona. Who knows what would come out of his skull?

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.

The AHRC invites submissions to *Ethics in Action* by individuals and organizations interested in issues of human rights, ethics and morality in Asia. Submissions can include articles, poetry, fiction and artwork. For more information, please write to eia@ahrc.asia.

Other regular publications by the Asian Human Rights Commission:

Article 2 – This quarterly publication covers issues relating to the implementation of human rights standards as proposed by article 2 of the International Covenant on Civil and Political Rights.

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