

FOCUS

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Editorial

Government and the Media

Governments see the necessity of laws that regulate the media, including having the authority to suspend the operations of media establishments. Online media, and the pervasive use of the internet, make some governments even more sensitive due to the speed and spread of information dissemination.

Media advocates see these legal measures as violating human rights, especially the right to freedom of expression and opinion.

While threat to national security is real, laws on media with punitive provisions create an environment that allows control or even suppression of legitimate exercise of this right.

In extreme cases, journalists, bloggers and social media practitioners in Asia who are being arrested and jailed based on these media laws are reporting or giving information on issues that are important to the people – from corruption to abuse of power by government officials, to displacement of communities and destruction of livelihood and natural resources by business entities.

Controlling people's access to the media (in print, broadcast or digital formats) and their right to express their opinion does not make the society safer.

Japan and Media: Some Issues

HURIGHTS OSAKA

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression discussed the situation of the media and freedom of expression in Japan in the “advance unedited version” of his report dated 29 May 2017.¹ The Japanese government submitted its comments on the special rapporteur’s report on 30 May 2017.²

During the 15th Meeting, 35th Regular Session of the Human Rights Council held on 12 June 2017, the Special Rapporteur (Mr David Kaye) gave a short report on his visit to Japan in April 2017. He emphasized three recommendations:³

First, the Broadcast Act lodges authority to regulate the broadcast media in the Ministry of Internal Affairs and Communications. Global standards promote independent regulation. And I encourage the government to move in that direction. As it stands, the authority of the government to suspend broadcast licenses on grounds of fairness, even if the government has never taken advantage of that authority, prevents a certain measure of risk for any broadcaster, one that government would do well to remove.

Second, the government should take steps to ensure broad access to information. The press club system or *kisha* system according to it journalists must be part of a club in order to attend department briefings represents a limitation to information by encouraging access journalism and discouraging tough-minded investigative reporting and they exclude independent voices.

Third, it is important for journalists themselves to find ways to [develop] general professional solidarity and for the government to encourage this. This is very difficult because of the way the Japanese employment is structured such that journalists like others in Japanese professions are first employees of companies and only secondly journalists. But it is crucial and the report documents examples where journalistic solidarity did not exist and facilitated restrictions and pressures on the media.

The representative of the government of Japan (Mr Junichi Hara) gave a response on the media independence issue. He stressed that⁴

[T]he Constitution of Japan fully guarantees freedom of expression and the right to

know. The government officials have not put pressure on journalists, illegally and wrongfully, and neither were there any cases in which the operation suspension order [based on] the Broadcast Act [was applied]. The Act does not give rise to any pressure on the media.

The three issues mentioned by the Special Rapporteur are discussed below.

The Broadcast Media

The Special Rapporteur noted that the Broadcast Act of Japan⁵ “recognizes the principle of broadcast media independence” as stated in Article 3, “Broadcast programs shall not be interfered with or regulated by any person except in cases pursuant to the authority provided for in laws.” In addition, the Radio Act⁶ regulates both public and commercial broadcasters.

He reported that the Broadcasting Ethics and Program Improvement Organization (BPO) was “created in order to implement self-regulation, thereby avoiding government interference.”

The Japan Broadcasting Corporation (NHK) and the Japan Commercial Broadcasters Association (JBA) established the BPO as “a non-profit, non-governmental organization that serves to improve the quality of

broadcasting and promote higher ethical standards while ensuring freedom of speech and expression.”⁷ BPO has a Broadcast and Human Rights/ Other Related Rights Committee that

investigates complaints filed by those who claim that their “human rights have been infringed upon” and determines “whether human rights have been violated” or “whether broadcast ethics problems exist”. The results are given as a “Committee Decision” which is notified to both the complainant and the broadcaster, and then publicly announced. (Established in 1997)

The Special Rapporteur explained that under “international standards, broadcast regulation should be conducted by an independent third-party actor, but the Broadcast Act, which regulates both the public Japan Broadcasting Corporation (NHK) and commercial broadcasters, lodges authority over them in the Ministry of Internal Affairs and Communications.” He cited Article 174 of the Broadcast Act which states:

If the broadcaster (excluding terrestrial basic broadcasters) has violated this Act or an order or disposition based on this Act, the Minister of Internal Affairs and Communications shall set a period within three months and shall order the suspension of the operations of the broadcasting.

He also cited Article 76 of the Radio Act that “gives the

Minister of Internal Affairs and Communications the power to suspend business operations of television and radio broadcasters for violations of the Broadcast Act or Radio Act.”

He then observed that while “substantive norms within the law promote autonomy and independence, this institutional framework creates the possibility of a regulatory environment that could result in undue restrictions on media freedom and independence.” He further explained that

media regulation in Japan is not legally independent of government, in particular not from the political party in power at any given moment. It is in the interests of the Government, the parties, and most importantly the people of Japan that this system be remedied and independent regulation replace the current system.

Similar to the point he raised at the 15th Meeting, 35th Regular Session Human Rights Council (12 June 2017), he noted that the

... lack of an independent media regulator does not pose merely hypothetical problems for the broadcast sector. The possibility of government interference based on content or affiliation – even if never sought in the government’s past – looms as a potential risk for the media, possibly deterring investigations that could run afoul of political sensitivities.

He explained that this

concern was raised time and again during the Special Rapporteur’s visit. Repeatedly, media professionals and academic and civil society observers raised a concern that the Broadcast Act mixes elements of ethical obligation with non-independent government power. Some saw official statements as making this concern valid, while some representatives from private media associations expressed the view that they do not perceive or fear pressure from the Government.

He reported that the Japanese “Government assured the Special Rapporteur that broadcasters are to comply with the Broadcast Act independently and autonomously, yet also maintained that as the ministry with jurisdiction over the Broadcast Act, the Ministry of Internal Affairs and Communications may lawfully apply the Act to suspend business operations of broadcasters.”

The Special Rapporteur noted that “there is a real tension in lodging government with the power to regulate broadcast media while at the same time emphasizing that broadcasters act independent of government pressure.”

The Japanese government responded to this view by stating that the

... Ministry of Internal Affairs and Communications, has continued to take the view that the suspension of the operations of broadcasting in accordance with Article 174 of the Broadcast Act or the

suspension of the operation of radio stations in accordance with Article 76 of the Radio Act in the case that a broadcast was made in violation of Paragraph 1, Article 4 of the Broadcast Act should apply only in very limited circumstances, complying with all the following conditions.

- (a) It is clear that a broadcast in violation of the provisions of the laws was aired.
- (b) Furthermore, the broadcast harmed public interests and it was contrary to the purpose of the Broadcast Act, and it is necessary to prevent the recurrence of such a broadcast in the future.
- (c) In addition to the above conditions, the same broadcaster repeats a similar act, the broadcaster's measures to prevent the cause and recurrence of such a broadcast are insufficient, and the self-regulation of the broadcaster is not expected to ensure broadcasting in compliance with the laws.

Ministry of Internal Affairs and Communications has continued to maintain the opinion that this provision should be administered with very careful consideration, and successive Ministers for Internal Affairs and Communications have made remarks in line with Ministry of Internal Affairs and Communications's conventional view, as well.

The Special Rapporteur explained that the professional

norms laid down in the Broadcast Act⁸ were "fair expectations that should be considered central to ethical journalism worldwide."

He asserted that a

non-independent Government agency should not be in the position of determining what is fair. This is a matter for public debate and self-regulation through such institutions as the BPO or, if deemed appropriate, an independent regulator evaluating clear terms and requirements that meet Article 19(3) standards.⁹ Generally speaking, the Special Rapporteur believes that official Government evaluation of such broadly stated norms would lead to deterrence of the media's freedom to serve as a watchdog, if it is not already creating such disincentives to reporting.

He further explained that while the "Government has never suspended a broadcast license on the basis of programming content under Article 4, concern among media professionals has been rising along with the increase in publicly stated Government concern with the substance and tone of reporting within the Japanese media." He cited instances off-the-record remarks of government officials (specially the one from the Chief Cabinet Secretary) that threaten the media. He summarized the main problem in this manner:

Here is the crux of the problem: if the Government were not in control of the

broadcast regulatory framework, the Chief Cabinet Secretary's statement may have less force. But in the context of government regulatory control, government criticism can reasonably be understood by the media to involve inappropriate pressure. Given the weaknesses of the media described below, such pressure, in this context, may be unreasonable.

Independent Media

The Special Rapporteur noted the lack of "strong, independent, secure and cohesive media" in Japan. He defined a strong and independent media as having "dynamic elements of competition but bound by common sets of ethical and behavioral norms [and] would easily be able to stand up to the kinds of pressures described above." Lacking such "characteristics as a group, even minor forms of pressure may create an outsized sense of crisis, even if some individual journalists buck the trends."

He attributed this situation in part to the

nature of employment in the media and the way journalists (and other professionals across the Japanese economy) are unionized. Journalists are employed by large media empires, and they tend to remain with their companies – and direct their loyalty toward them – for decades, often entire careers. They may be removed from one position as a journalist and transferred to non-journalistic roles in the company. Union

representation happens only within company level.

He explained that the “very structure of media employment in Japan can affect efforts to withstand pressure from government or to develop cross-outlet solidarity among journalists.”

Illustrating this point, the Special Rapporteur reported the following:

33. One of the striking features of the visit was the fact that most of the journalists with whom the Special Rapporteur met requested confidentiality to speak about the situation they believe they face. They expressed fear that management would retaliate against them for raising their voices, particularly in the absence of an independent body to protect them. And yet no broad union of journalists brings together mainstream and freelance reporters, limiting the possibility of solidarity and advocacy and shared purpose. Nor does any press council independently self-regulate across all areas of journalism.

He also cited as among the “key factors undermining the media’s unity and ability to gather information in the public interest ... the so-called “Kisha club” system:”

35. The Kisha clubs establish a norm of access and exclusion typically limited to specific organizations of the media to the detriment of freelance and online journalism and foreign journalists. For example, some journalists claimed that police press conferences are

particularly inaccessible to non Kisha club members, with concerns being expressed even by lawyers on the disproportionate control that these clubs may have on information on certain cases and on the informal proximity developed between law enforcement authorities and journalists belonging to the club, possibly interfering in the outcome of court cases. Additionally, media business groups organized around Japan’s national newspapers ensure that other news outlets, especially television broadcasting, are brought into the Kisha club system and follow its news gathering and reporting rules. Each of the nation’s five national commercial television networks is tied to a major national daily. This limits the number of participants in the marketplace of information.

The comments of the Japanese government (A/HRC/35/22/Add.5) to the report of the Special Rapporteur do not discuss the Kisha club issue.

Conclusions and Recommendations

The Special Rapporteur recommended the review of the “current legal framework governing the broadcast media and, in particular,” ... “review and repeal Article 4 of the Broadcast Act in order to strengthen media independence by removing the legal basis for government interference.” Also, the Special Rapporteur “strongly urge[d] the Government to develop the framework for an independent regulator of the broadcast media.”

He called on “authorities and media groups to publicly express their rejection of any form of threat and intimidation against journalists or other professionals carrying out investigative reporting work.”

He also called upon “journalists associations to discuss the impact of the current kisha system and for all in a position of responsibility to, at the least, broaden the membership to allow the widest possible range of journalists to participate.”

He further called on the journalists to “assess how the promotion of independent reporting could be furthered by the promotion of associations among professionals working in multiple media.”

Endnotes

- 1 A/HRC/35/22/Add.1, 29 May 2017. Full text available at www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx
- 2 A/HRC/35/22/Add.5
- 3 UN Web TV, Item:3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development - 15th Plenary Meeting, 35th Regular Session of the Human Rights Council, <http://webtv.un.org/watch/id-sr-on-freedom-of-expression-15th-meeting-35th-regular-session-human-rights-council/5468752878001?lan=arabic>.
- 4 Japan (concerned country), Mr. Junichi Ihara, <http://webtv.un.org/watch/id-sr-on->

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Internet Freedom in Mongolia

Kh.Naranjargal

The Constitution of Mongolia declares that ratified international treaties and conventions shall be valid as domestic laws.

On 5 May 2015, Mongolia went through the United Nations Universal Periodic Review (UPR) and eight countries provided several recommendations related to the media: harmonize national legislations with international law, ensure independence of the media regulatory body, decriminalize defamation, ensure legal protection of journalistic confidential sources and whistle blowers and provide safety to journalists and human rights activists. The Mongolian government accepted all the recommendations and on 11 April 2016 adopted its General Action Plan on the implementation of the UPR recommendations.

It is praiseworthy that Mongolia has adopted two policies to protect journalists and ensure their safety. The National Program to Fight Corruption adopted by the Parliament on 3 November 2016 pledges to “[C]reate the legal environment for protection of whistle bowlers and journalists (4.1.5.6), “create legal regulation to protect the journalists who reported on corruption and crimes of public officials by investigations from attacks and

pressures, decriminalize defamation and ensure their safety” (4.1.8.2), and “[create an] enabl[ing] environment for ensuring independence of media and safeguarding media freedom” (4.1.8.3).

On 6-7 July 2017, the UN Human Rights Committee reviewed the sixth report of Mongolia on the International Covenant on Civil and Political Rights (ICCPR) and one recommendation of the Concluding Observation No 38 reads:¹

In the light of the Committee’s general comment No. 34 (2011) on the freedoms of opinion and expression, the State party should ensure that any restriction on media activities is in strict compliance with the provisions of article 19 (3) of the Covenant. It should consider fully decriminalizing defamation and ensure that defamation is not subject to deprivation of liberty and that defamation laws, both criminal and civil, do not serve to stifle freedom of expression. It should also protect journalists and media workers against any form of harassment and threats, promptly investigate all such attacks and bring those responsible to justice to receive commensurate punishment.

Internet Freedom in Mongolia

The Mongolian government adopted its main policies on broadcast and online media in 2011 and, since then, the Communications Regulatory Committee (CRC) has adopted over thirty internal regulations including the “General Condition and Requirement on Broadcasting Service” and the “General Condition and Requirement on Digital Content,” which apply to news and information websites, content aggregators and content supplying services. The regulations also set standards on issuing, terminating and withdrawing licenses and standards on studio equipment. Since 2011, the CRC has become the only regulatory body on broadcast and online media in Mongolia.

On 5 January 2013, the government adopted Resolution No. 1, “A Unified System for Website Comments.” With this decree, the government tasked the Information, Communication, Technology and Post Authority (ICTPA) and the General Intelligence Agency to work together to develop software and technical solutions to implement a “unified system.” It contained technical and administrative measures to regulate the content of online comments on Mongolian online media. The official objective was to prevent online slander, insults and threats. This decree

was approved during a Cabinet meeting, without prior consultation with the media and information technology (IT) industries, the civil society organizations (CSOs), or a parliamentary discussion. Both the decree and the way it was adopted were heavily criticized by most members of the media and the IT community. Concerns were raised about the applicability of the measures contained in the decree and about their legitimacy under both national law and international standards on freedom of expression. It was the government's intention to use this new software to identify netizens and thereby end online anonymity. Once the netizen was identified, he or she would be held accountable for posting comments that were considered, under Mongolian laws, to be potentially criminal in nature, libelous, insulting, threatening, or in breach of obscenity laws. The National Data Center is supposed to ensure the technical reliability of this unified system, and the State Registration Authority is supposed to gather information on users who post comments on websites based on the intersection between Internet Protocol (IP) information and the netizens' civil data and the database of mobile phone users. Internet service providers and mobile operators are obliged to install the government-developed software and to collaborate with the authorities' efforts to identify netizens.² Until now, it is not publicly known if the system had been developed and operated.

As per the decree, the CRC is required to adopt the regulatory

procedure for the issuance of domain names and define the requirements for news websites. In September 2014, the CRC adopted the amendments to the "General Conditions and Requirements for Regulation of Digital Content." These regulations cover servers, web hosting companies, online content aggregators, online content suppliers and other Internet Service Providers (ISPs). According to the regulations, the IP addresses of users posting comments shall be indicated and news and information websites shall place the IP addresses of their users on top of the comments generated by the user.

Moreover, the news and information websites are required by the regulations to use filtering software to spot forbidden keywords, turning them into asterisks (**). The software blocks eighty-six words in the Mongolian language (written in Cyrillic), such as *mansuurakh* (muddle), *yankhan* (prostitute) and *erliiz* (mixed-blood). It also blocks one hundred eight words written with Latin characters or in English, such as "sex" or "terrorist." The software reportedly contains flaws. It does not take into account the contextualized meaning of the words and blocks all words containing letters or syllables similar to those of the prohibited words. In accordance with the above regulation, websites must be registered by www.happywebs.mn.

During the last 2016 Parliamentary elections, eleven news websites were blocked for twenty-four hours. By May

2017, a total of 552 websites were blocked for allegedly breaching the Intellectual Law, following a statement from the state inspector.

Prosecution of Offenders

Resolution No. 1, "A Unified System for Website Comments," obliges the Justice Minister to take measures to identify users who post comments that are deemed libelous, insulting, seductive, obscene and threatening others in order to impose upon them legal liability. The procedure on the implementation of the Resolution obligates private Internet providers and mobile phone operators to help government bodies to identify persons suspected to be in violation of the laws and to collect information about them. The CRC has the power to both issue and revoke licenses, but this process lacks transparency and public participation. International standards and domestic law dictate that the regulatory body must be independent. In reality, however, it is a government-controlled body. The CRC belongs to a government agency, the ICTPA. The chairperson and commissioners of the CRC are appointed and dismissed by the Prime Minister and they report to the government. There are currently seven commissioners of the CRC representing government bodies.

Problem of Rules and Procedures

Since Mongolia does not have a general broadcast law, regulations are taken from

internal rules and procedures of the CRC. The restrictions under these internal rules and procedures are contradictory to the provisions of Article 19 of the International Covenant on Civil and Political Rights (ICCPR) which states that restrictions must be provided by law and “must conform to the strict tests of necessity and proportionality.”³ Moreover, the CRC regulations breach Government Resolution No. 119, “Rule on Issuing Public Administrative Regulations,” issued on 19 May 2010, which states that they “must conform to the standards set forth by law,” and “must not impose new duties which are not stated in the law, nor must it set prohibitive regulations not imposed by law.” Furthermore, they “must not include sanctions” and “decision makers must do regulatory impact assessment according to the Rule.”

Public administrative regulations are enforced only after their registration under the Unified Registration System of the Ministry of Justice and Internal Affairs, after finding them to be in compliance with basic requirements of the system. Many of the public administrative regulations (internal rules and procedures) of CRC have not been registered as of 2017, including the “General Conditions and Requirements for Regulation of Digital Content.” Therefore, CRC’s cancellation of licenses and its censoring of online media using these unregistered regulations are serious breaches of the Constitution, the Law on Media Freedom, and Article 72 of the Law on General

Administration enacted on 16 June 2015 that obliges the government/public bodies to register their administrative regulations to the Unified Registration System.

Content Restriction

The CRC controls the content of news and information websites, content aggregators and content suppliers. The scope of legal restrictions concerning content is not well-defined and far too broad in its language. For example, cited content comes under such general phrases as “cruel religious doctrine” or “pornography.” Public bodies such as the General Police Authority, ICTPA, the Authority for Fair Competition and Customers control the content of websites. Based on official statements and communications of these public bodies, the CRC has the power to close down or block any provider’s services.

Concluding Note

The Mongolian government needs to take urgent action towards implementing the recommendations of the UN’s Universal Periodic Review, Human Rights Committee and UNESCO by supporting media law reform consistent with its obligations before the international community as stated in the Constitution.

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Endnotes

- 1 Human Rights Committee, Concluding observations on the sixth periodic report of Mongolia, CCPR/C/MNG/CO/6, 22 August 2017.
- 2 Government Resolution No. 1, 2013, text available at www.legalinfo.mn/law/details/8939?lawid=8939.
- 3 Human Rights Committee, General Comment No. 34 - Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, <http://bangkok.ohchr.org/programme/documents/general-comment-34.aspx>.

Gaokor: When Will This Life-threatening Custom End?

Dilip Barsagade

She had been living in the run-down hut on the outskirts of a tribal village, barely seven kilometers from Gadchiroli, Maharashtra State, for the past four days. She was not allowed to enter the village. She was an untouchable to everyone in the village, including her entire family. Despite the deathly cold, this fourteen-year old girl spent the last four nights in the ramshackle, doorless hut with just a tattered mat and blanket.

What did she do to deserve this? What crime did she commit that she had to face the life of an outcast?

According to the custom of the Madiya and Gond tribals in Maharashtra state, girls having their menstruation period have

to stay in a hut on the boundary of the village as their touch is considered impure. These huts are called *gaokor*.

The Issue

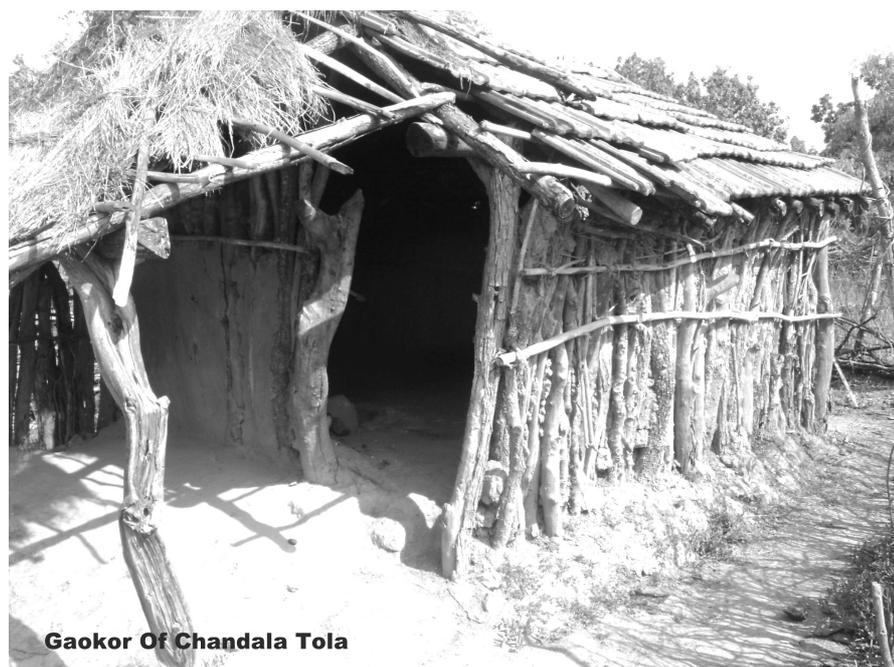
Menstruation is nature's rule. It starts in women around the age of twelve and continues till menopause, which occurs between forty-five to fifty-five years. This monthly occurrence, which is part of the process of reproduction, is a difficult time for women (especially young girls) who need care since blood loss in large quantity leads to exhaustion. They need mental as well as physical support. Living in the *gaokor* in this difficult time can be a life-threatening situation for hundreds of tribal women and girls.

Two years ago, during the monsoons, a young girl lost her life in the Bhamragad district due to excessive loss of blood. She could not get any medical aid in the *gaokor* which was outside the village. Not only is the time spent in the *gaokor* dangerous to the health of girls and women, it is also unsafe. In November 2015, a girl was carried away by a wild animal. More incidents of drunkards harassing girls and women living in *gaokors* have been reported.

In villages with large population, women have company during their time in the *gaokor*. In the past, old women stayed with the women living in the *gaokor*. But the reality today is that such old women are absent in most villages.

A girl who graduated from secondary school (12th year of schooling) came to the Mannerajaram primary healthcare center and narrated her experience:

We are forbidden from walking on any village road during this period. I have an old mother and alcoholic brother. Many times, the food doesn't reach me on time. We cannot go into the village even if we are starving. The monthly period is a law of nature. This is my fate. My education is of no use here.



Gaokor Of Chandala Tola

As she said this, her eyes teared up with sheer frustration as she realized that she could not do anything to change the situation. The head of the tribal youth group of the Chandali Toli said, "Even the sight of a woman who has her monthly period is inauspicious for us after we have a bath."

"It is our duty to preserve this custom that has been going on since a long time," said the deputy *Sarpanch* (village head) of the neighboring village. When told that the tribal women who live in the city do not stay in the *gaokor* during their monthly period, he said, "It is because of such people that our culture is being destroyed."

Women do not sit idle even during her monthly period if they stayed at home. They will find some work to do. Some people say that the *gaokor* is meant to force the women to take a rest. But how can the women rest by staying in an ill-equipped, doorless, isolated hut? People who support the *gaokor* custom do not have an answer to this question. Some people in the community firmly believe that the utensils, clothes and other things become "impure" if the women with menstruation touch them, thus staying outside the house is the best arrangement. However, they cannot give a concrete reason for not allowing the women to walk on the street.

Gaokor

A study by SPARSH of around 225 *gaokors* in five tribal *bahul* (tribal dominated) villages revealed their pathetic

condition. Most have a single window for light and no door. Almost all *gaokors* are on the border of the village, and more often than not at the edge of a dense forest. Their surroundings are astoundingly unclean. Among the most basic necessities in the *gaokor* is a small pot for drinking water, a temporary bathroom built using banana leaves for bathing and a broken bed, if at all, along with threadbare sheets for sleeping.

The community owns and maintains the *gaokors*. But the influence of cities among the tribals led to the neglect of the *gaokors*. Only a handful of *gaokors* are taken cared of collectively.

Government Response

The government of India has a program for the integrated socio-economic development of the Scheduled Tribes (STs). Funds are provided to state and local governments for this purpose.

In the town of Gadchiroli in Maharashtra state, the local government using the funds from *Ekatmik Tribal Vikas Prakalp* (Integrated Tribal Development Scheme, Gadchiroli) implemented a project in March 2017 to improve a hundred selected *gaokors*. Hundreds of thousands of Indian Rupees were spent to buy plates, bowls, drums for water, mats, cabinets, etc. for the *gaokors*. However, due to the usual lack of authorization, coordination and information, the purchased items failed to reach the *gaokors* and ended undistributed in the offices of district administrators and the

Adivasi Vikas Vibhag (Tribal Development Department).

This case illustrates the wrong reason for the government scheme of refurbishing *gaokors*. The girls and women during the period of menstruation need support from their family. The primary concern is the maintenance of their good health. But this concern is not yet in the thinking of people in tribal communities. They still do not see the problem that any form of improving the *gaokor* custom (such as by refurbishing them) strengthens this appalling custom. While improving the condition of the *gaokors* can be a first step towards change, without schemes to change people's mentality any developmental initiative will only result in waste of funds.

SPARSH filed a complaint on this issue on 10 July 2013 with the National Human Rights Commission of India (NHRC), urging its intervention in the matter and the issuance of necessary directives to the concerned authorities.

The NHRC directed the Chief Secretary of Maharashtra state to "look into the matter and sensitize the concerned officer about the gross violation of human dignity and human rights of the affected women..." The state government formed a Committee on 26 December 2014 to study the *gaokor* issue and find out necessary measures to eradicate the *gaokor* custom. The then Deputy Secretary of Tribal Development Department informed the NHRC in February 2015 that a Committee had been formed under the

leadership of a District Collector. The structure of the Committee was also mentioned in his report. But the Committee had actually never existed.

In 2017, the NHRC directed the Chief Secretary of Maharashtra state to inquire into the matter and to take appropriate action against the concerned officials for not convening the meeting of the Committee formed by the government and filing a wrong report to the Commission.

Taking a serious note of the lapse, it also asked the Chief Secretary of the Tribal Development Department to appear before it in person on 20 December 2017 and produce the required information and documents. The NHRC issued another directive on 16 January 2018 and criticized the government for its continuing ignorance on this deadly issue.

Future

On 15 November 2017, Jayanti Baburao Gawde, 40, went to sleep in the *gaokor*. Jayanti was lucky that night because she was accompanied by a girl who was also on her period. The next morning, the girl woke up and went home, but Jayanti did not stir. Jayanti was later rushed to the hospital and was declared dead on arrival. High blood pressure was reported as the cause of her death. The villagers felt that she could have been saved had she stayed with her family. Jayanti was from Etapalli Tola, of Etapalli Block, in Gadchiroli district. Etapalli block's medical officer, Dr Pavan Raut, noted the unhygienic conditions in the

kurma ghar (literally, period house):

The unhealthy practices adopted by tribal women during their menses lead to various RTI [reproductive tract infections]. The scruffy environment of Kurmaghar creates more pathetic condition. The problem also lies in the fact that they don't want to visit the hospital for treatment.

The tribals have a prosperous culture, rich enough to make urban society bow its head in shame. The tribal culture has several good practices and traditions. But, the *gaokor* custom is a blight on the *adivasi* (tribal) culture. These proud tribals need to be informed in confidence about the harm the *gaokor* custom causes.

SPARSH, which has been doing a lot of work in this area including interactions with the women, found that at least some people from the Madia and Gond communities have accepted the fact that the

gaokor custom is harmful. But they do not dare give up the custom for fear of ostracization. SPARSH has reached the conclusion that it is impossible to suddenly end this practice because of the strong beliefs of the tribals. The least that can be done is improve the living conditions of the *gaokor* for the meantime. It is heartening to know that there are a few tribals who are working for this cause.

While an Indian-origin astronaut Sunita Williams has left an indelible mark in the field of science through several successful space missions, thousands of Indian tribal women have to live in life-threatening conditions created by the atrocious *gaokor* custom.

Till today neither the government nor any social welfare organization has taken up the *gaokor* problem. The important question is: when will people wake up and recognize this problem?

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11.04.2016 12:20

Business and Human Rights Compliance

Jefferson R. Plantilla

The “Business and Human Rights Compliance” conference held in Bangkok in December 2017¹ dealt with the involvement of business in the existing problems of people in the workplace and in the rural communities in Asia.

Plea from the Industry

The representative (Netithorn Praditsarn) of Charoen Pokphand Group Co., Ltd., a big Thai company, discussed the need for a collaborative attitude of all stakeholders (“how to move forward together to realize human rights”), and the lack of capacity of some companies to implement the United Nations Guiding Principles² (due to costs and difficulty in operationalizing the human rights principles in the company systems). He also mentioned the difficulty of monitoring foreign workers due to lack of control of

employment agencies in the countries of origin.

Practical issues such as capacity of companies to implement the UNGP and the capacity of affected stakeholders (including the workers and members of the community adversely affected by company operations) to protect their human rights are determinative of the realization of human rights in the field of business as a whole.

Is collaborative attitude among all stakeholders the proper approach to address the current human rights issues affecting business, and to avoid such problems from occurring again in the future?

Current Issues

Business-related human rights issues in Asia are not different from the issues addressed decades ago by the Asian non-

governmental sector. Their current forms continue to be land issues (non-recognition of customary land rights, displacement of land owners, land registration system that cause loss of land), exploitation of water resources ranging from building dams (such as those on the Mekong river) to sea-polluting industries, and exploitative labor conditions (affecting both local and foreign workers). In a number of cases cited at the conference, government support was a major part of the problems such as in the development of hydropower dams on the Mekong river and the displacement of communities (physical as well as livelihood displacement) in government projects (with the business sector involvement).

The problems of migrant workers and unethical recruitment practices are persistent in Asia. Migrant work is a big business for both recruitment agencies and employers in countries of destination (such as palm plantation companies in Malaysia and Thai seafood companies). The discussion in the conference on exploitation of local labor included problems in garment factories in Myanmar, Cambodia and China, and sugarcane plantations in Cambodia.



The persecution of people who expose these problems remains a recurrent problem that has to be addressed alongside the promotion of the UNGP.

Applying the UNGP

The application of the UNGP on the issues presented has two sides. The first, on the business side, is the voluntary adoption by companies of human rights policies and mechanisms to govern their operations (both at the internal and field levels). The reality however shows that many companies declare subscription to the UNGPs but do not guarantee their compliance with their commitment to respect human rights. Thus there is a need for monitoring systems or watchdogs to pressure the companies to fully comply with their commitment.

The other side is that of the workers and the members of the communities adversely affected by company operations. For these people, the third pillar of the UNGP plays an important though not exclusive role.

A case study on the efforts of Thai rural communities (with the support of non-governmental organizations) along the Mekong river to stop government projects on the river showed both the variety of mechanisms to employ (judicial and administrative, within and outside Thailand) and the difficulty of getting these mechanisms to address the problem.

The discussion at the 2017 United Nations Forum on Business and Human Rights on the third pillar (access to

remedy) of the UNGP was a relevant input in the conference. The Geneva forum noted the need to treat the third pillar not as one pillar but as part of the two other pillars.

During the open forum, it was stressed that indeed much of the problems relate to the “local.” The problems of applicants for overseas employment starts with the exploitative local recruitment agencies that put the workers in debt before leaving the country, and in danger in the country of destination.

At the same time, local remedies were crucial in addressing the problems. Thus the need to work with local NGOs (including lawyers) that assist communities and workers in holding companies liable for the abuse of their human rights.

The German-Southeast Asian Center of Excellence for Public Policy and Good Governance (CPG) based in the Faculty of Law Thammasat University organized the conference in cooperation with the Hanns

Seidel Foundation, Bangkok/Laos Office.

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For further information on the proceedings of the conference, please contact the German-Southeast Asian Center of Excellence for Public Policy and Good Governance (CPG), ph (66 2) 613 2971; e-mail: contact@cpg-online.de; www.cpg-online.de.

Endnotes

- 1 Materials of the panelists in the conference are available at www.cpg-online.de/2018/01/03/business-and-human-rights-compliance-challenges-and-trends/.
- 2 Guiding Principles for Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, for the full text of the document see www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.



Recent Activities of HURIGHTS OSAKA



Follow-up Seminar on Business and Human Rights

HURIGHTS OSAKA organized a seminar on business and human rights on 9 January 2018 as a follow-up to the 6th United Nations Forum on Business and Human Rights (Geneva, 27-29 November 2017) and to report on the Japanese National Action Plans (NAP) Forum held in Tokyo in December 2017. The first session focused on the past UN Forums, the current trend on business and human rights, and the gender aspect of the 6th UN Forum 2017. The second session was a briefing on the NAP Forum including the main subjects and the missing items in the discussions. Twenty-seven people attended the seminar, mainly from corporations and NGOs.

Seminar on Human Rights Situation in Japan: Towards the Future and For Prevention of the Loss of Our Rights

HURIGHTS OSAKA organized a seminar on 12 January 2018 with Ms Sanae Fujita, a fellow of the Human Rights Centre, University of Essex, as speaker. Ms Fujita discussed the report made by Mr David Kaye, United Nations Special Rapporteur on

the freedom of expression, and the 18 May 2017 letter of Mr Joe Cannataci, Special Rapporteur on the right to privacy, to Prime Minister Shinzo Abe which warned about the violation of right to privacy by the “anti-conspiracy bill.” She discussed the disagreement between the Special Rapporteurs and the Japanese government regarding the situation in Japan, along with the Japanese media report that the Japanese government asserted that Mr Cannataci acted only in a “private capacity” and “did not represent the UN.” Twenty-three people participated in the seminar.

25th One World Festival: Workshop on “Kicking Out Discrimination”

HURIGHTS OSAKA organized a human rights education workshop with Ms Michiko Tomioka, a cross-cultural



communication trainer, on 3 February 2018. The workshop provided an opportunity to the participants to think about eliminating hate speech in sports events. Ms Tomioka recalled the recent cases of hate speech in sports events in Japan and encouraged the participants to think of the reasons for such incidents and how they became problematic. She also spoke about the need to raise empathy on the victims of hate speech. She ended the workshop by asking the participants to individually think of an action that would “kick out” hate speech and discrimination. Thirty-three people participated in the workshop.

The workshop was held on the occasion of the 25th One World



Festival, the biggest event in western Japan for exhibition of the activities of international and governmental-related organizations and NGOs/NPOs

that are involved in international cooperation.

Japan and Media: Some Issues

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freedom-of-expression-15th-meeting-35th-regular-session-human-rights-council/5468752878001?lan=arabic#.

5 Text of Broadcast Act available at www.soumu.go.jp/main_sosiki/joho_tsusin/eng/Resources/laws/pdf/0902045.pdf.

6 Text of the Radio Act available at www.soumu.go.jp/main_sosiki/joho_tsusin/eng/Resources/laws/2003RL.pdf.

7 The Broadcasting Ethics & Program Improvement Organization (BPO), www.bpo.gr.jp/?page_id=1092.

8 He cited the following professional norms in Article 4 of the Broadcast Act providing that broadcasters “not harm public safety or good morals,” “be politically fair,” “not distort the facts,” and “clarify the

points at issue from as many angles as possible.”

9 This refers to the third paragraph of Article 19 of the International Covenant on Civil and Political Rights.

Gaokor: When Will This Life-threatening Custom End?

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HURIGHTS OSAKA Calendar

The 8th volume of *Human Rights Education in Asia-Pacific* contains articles from the following countries: Bangladesh, India, Iran, Malaysia, the Philippines, Myanmar/Burma, South Korea, Japan, and Mongolia. They discuss the experiences of people involved in organizing film festival, peace education, training of journalists, community orientation on overseas labor migration, civil and political rights education and education of the youth.



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HURIGHTS OSAKA, inspired by the Charter of the United Nations and the Universal Declaration of Human Rights, formally opened in December 1994. It has the following goals: 1) to promote human rights in the Asia-Pacific region; 2) to convey Asia-Pacific perspectives on human rights to the international community; 3) to ensure inclusion of human rights principles in Japanese international cooperative activities; and 4) to raise human rights awareness among the people in Japan in meeting its growing internationalization. In order to achieve these goals, HURIGHTS OSAKA has activities such as Information Handling, Research and Study, Education and Training, Publications, and Consultancy Services.

FOCUS Asia-Pacific is designed to highlight significant issues and activities relating to human rights in the Asia-Pacific. Relevant information and articles can be sent to HURIGHTS OSAKA for inclusion in the next editions of the newsletter.

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